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ABSTRACT

This study gathered information on services related to special education that are provided to meet the needs of students with disabilities. The study utilized an historical and legal approach, through analysis of: related services litigation at the judicial and state education administrative level; policy interpretations by the State Policy and Administrative Review Branch of the Division of Assistance to States, Bureau of Education for the Handicapped; and Florida law and related services provisions. Following a literature review, the study reviews nine court decisions pertaining to related services. It also covers selected state-level administrative decisions in the areas of medical, school health, and supportive services; physical therapy services; occupational therapy services; and transportation services. To determine the present status of school health services for handicapped children in Florida, data were analyzed from the Florida State Department of Health and Rehabilitative Services and a statewide survey was conducted specifically in the areas of suctioning and catheterization. An appendix lists, by school district, the number of handicapped children and youth receiving related services in Florida. Includes 77 references. (JDD)

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An Historical Analysis of Related Services Litigation for Handicapped Children

by
Joyce B. Holmes

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F.E.R.C. NOTES ON THIS BULLETIN

This Bulletin is a valuable resource for all those who are responsible for the education of special needs children, and for those who are interested in school law. Joyce Holmes has fashioned a scholarly document and F.E.R.C. is happy to have the opportunity to publish it for the benefit of member Districts of F.E.R.C. and the educational community at large. All who are interested in exceptional child education should have a copy of this Bulletin in their reference library.

Charlie T. Council
Executive Director

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CHAPTER I

INTRODUCTION

Although it has now been over a decade since the enactment of the Education for All Handicapped Children Act of 1975,[1] there are still problems and limitations that impringe upon full implementation of the Act.[2] In spite of these problems, this act has had a significant effect on the rights of the handicapped and upon the American Education System.

Historically, the federal government's role in assisting the handicapped first occurred in 1864 when President Abraham Lincoln signed a law providing federal support for the Hearing Impaired by establishing Gallaudet College in Washington, D.C.[3] Some states developed permissive legislation in the early 1900s to provide schooling for the handicapped. Consequently, with only permissive statutes the educational rights of the handicapped children developed slowly in the United States. The historic 1954 decision in *Brown v. Board of Education*[4] doubtlessly did more to change American education than any other case ever litigated.[5] The Supreme Court affirmed and established the principle that all children be given an equal educational opportunity. The court stated:

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[6]

To provide necessary program leadership under the 1966 Title VI Elementary and Secondary Education Act, Public Law 89-750, Weintraub states that the expansion of programs for the handicapped and the increased responsibility of the Bureau of Education for the Handicapped could be attributed primarily to three factors.

> First, education programs for the handicapped grew and achieved visibility; interest groups representing the handicapped brought special education more clearly into the political sphere. Second, new approaches, both legal and administrative, were instituted to overcome deficiencies inherent in the relationship between special education and government. Third, the introduction of a new partner, the federal government, in the special education enterprise, had a catalytic effect on the field.[7]

However, parents of the handicapped children continued to struggle to obtain programs which were being constitutionally denied to their children. Therefore, to assure themselves a remedy, parents began utilizing the courts. The impetus for the Education for All Handicapped Children Act legislation is often attributed to the decisions in two landmark court cases, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (PARC)[8] and *Mills v. Board of Education of District of Columbia.*[9] In the first case, PARC brought a class action suit against the Commonwealth of Pennsylvania for the state's failure to provide mentally retarded children access to a free public education. The court affirmed the right for access to a free publicly supported education program for all mentally handicapped.[10]

Following the Pennsylvania decision, another monumental achievement for the handicapped occurred in *Mills v. Board of Education of the District of Columbia.*[11] The plaintiff, handicapped children, contended that they were excluded from public school education. The court ordered that:

> No child eligible for a publicly supported education in the District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy, or practice of the Board of Education of the District of Columbia or its agents unless such child is provided:
>
> (a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants, and
> (b) a Constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative.[12]

These court rulings and other similar court actions made it clear that Congress inevitably was going to take a more active role in assuring that all handicapped children be provided an equal educational opportunity.

The Education for All Handicapped Children Act of 1975 (P.L. 94-142) was enacted on November 29, 1975, and was the culmination of nearly ten years of legislation.[13]

Congress stated that the purpose of this act was to:

> ...assure that all handicapped children have available to them, within the time periods specified, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the right of the handicapped children and their parents or guardians are protected, to assist states and localities to provide for education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.[14]

It was felt by the United States Department of Education that the most logical approach to writing the proposed rules was to write minimum regulations and to amend and revise these regulations when needed in the future. Therefore, the basic wording and substance of the statute was placed in the regulation and statutory provisions were to expand on only where additional interpretation seemed necessary.[15]

One of the most complex regulations for state and local educational agencies to interpret and comply with under P.L. 94-142 has been that of related services for the handicapped. The term "related services" as listed in the Act states:

> "Related services" means transportation, and such developmental, corrective and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.[16]

Provisions for Special Education in Florida

In 1973, programs for exceptional students became mandatory in the State of Florida. That same year the Florida Education Finance Program was adopted which allowed for greater district flexibility in areas such as program development. By 1977, with the advent of P.L. 94-142, the State Board of Education adopted more rigid rules for exceptional students, particularly in the areas of eligibility, evaluation, and placement procedures. Consistent with the federal regulations implementation of P.L. 94-142, additional rules were adopted in the state to include parent participation, individual education programs and Procedural Due Process.[17] These procedural rights entitle parents to initiate a Due Process Hearing on behalf of their child. They may appeal this decision to District Court and if they believe a fundamental constitutional right has been violated, they may take the case to State or Federal Trial Court.

Under Florida Statute 230.23 it is the duty of each school board to provide for an appropriate program of special instruction, facilities, and services for exceptional students, including provisions that:

1. The school board provide the necessary professional services for diagnosis and evaluation of exceptional students.
2. The school board provide the special instruction, classes, and services either within the district school system, in cooperation with other district school systems, or through contractual

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arrangements with approved non-public schools or community facilities which meet standards established by the state board.

3. The school board submit annually to the department its proposed procedures for the provision of special instruction and services for exceptional students.

4. No student be given special instruction or services as an exceptional student until after he has been properly evaluated, classified, and placed in the manner prescribed by rules of the state board. The parent or guardian of an exceptional student evaluated and placed or denied placement in a program of special education shall be notified of each such evaluation and placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to a due process hearing on the identification, evaluation, placement or lack thereof...

5. In providing for the education of exceptional students, the superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students whenever this is possible. No student shall be segregated and taught apart from normal students until a careful study of the student's case has been made and evidence has been obtained which indicates that segregation would be for the student's benefit or is necessary because of difficulties involved in teaching the student in a regular class.[18]

The term "exceptional students" is used in the State of Florida to denote the inclusion of gifted children. Under State Board of Education rules an exceptional student is defined as:

> Any child or youth enrolled in or eligible for enrollment in the public schools of a district who requires special instruction or related services to take full advantage of or respond to educational programs and opportunities because of a physical, mental, emotional, social or learning exceptionality.[19]

Special programs are provided for mentally handicapped, speech and language impaired, hearing impaired, visually impaired, physically impaired, emotionally handicapped, including severely emotionally disturbed, specific learning disabilities, homebound or hospitalized, gifted, deaf-blind, autistic, and exceptional students who require physical and occupational therapy.[20]

Eligible exceptional students are provided special programs which encompass:

> Instruction and related services which provide significant adaptations in one or more of the following: curriculum, methodology, materials, equipment, or environment designed to

> meet the individual learning needs of exceptional students.[21]

Significance of the Study

Since the implementation of P.L. 94-142 there has been considerable litigation on issues involving related services. Professionals involved in the decision-making process of what constitutes a related service for individual children spend a majority of their time in this particular area.

In 1982, Blaustein, the Executive Director of the National Association of State Boards of Education, stated the related services provision is:

> one that was cited frequently as being particularly problematic to state and local education agencies. In view of the statutory language, we question the extent to which these problems can be removed by regulatory revisions. The problems with this provision center around (1) costs of services, and (2) delegation to education agencies of those services that were traditionally provided by other agencies involved in the care of handicapped children.[22]

A survey of the effects of P.L. 94-142 as perceived by the readers of *Education Daily* and *Education of the Handicapped* was done in August of 1985. A question of particular importance to the author was, "Should the Education Department again try to deregulate P.L. 94-142?"[23] Of those who responded, 36.4 percent said "yes," and the majority, 63.6 percent, said "no." The State Special Education Administrators responded with 40 percent saying "yes," whereas, 60 percent of the respondents said "no." Of those advocates responding, Administrators responded similarly with 41.9 percent stating "yes," the remainder, 58.1 percent, saying "no." Of those advocates responding, 96.2 percent said "no." For those respondents who answered "yes" to this deregulation question, they were then asked to identify the areas that should be reviewed. The choices given were least restrictive environment, related services, due process, and discipline. The largest area of responses was in related services with 41.2 percent indicating it. Of the local special education administrators, 42.5 percent indicated that this category should be reviewed again.[24] It is evident that the local special education administrators still have concerns in the area of related services. The author believes that this may be attributed to the lack of adequate funding, the lack of trained personnel, delivery models, new roles and responsibilities of school personnel, the lack of interagency coordination, gray areas of the law including medical versus nonmedical services, deinstitutionalization of children with complex handicaps and the liability on behalf of professionals who provide these services.

Over the last decade, special education and related services have expanded so that 4,115,979 children are presently served throughout the nation.[25] As children with more diverse disabilities are in need of a free appropriate education, clarification of the parameters of related services, specifically medical versus school health services, will have to be defined throughout the United States.

With the enactment of the Handicapped Children's Protection Act (P.L. 99-372) in August 1986, allowing the court to award reasonable attorney's fees as part of the costs to the parents or guardians of a handicapped child who prevail in any action brought under the Education for the Handicapped Act, the author feels that this may cause a trend toward more litigation in this area. Therefore, it is imperative that professionals in this field stay abreast of the laws and recent court decisions in making relevant decisions on behalf of all handicapped children.

Purpose of the Study

The purpose of this study was to provide updated knowledge in related services so that professionals may develop procedures and make appropriate decisions regarding the individual needs of the handicapped. This concise information will therefore provide guidance in the parameters of related services.

Specific answers to the following questions were addressed:

1. What constitutes a related service under the Act?
2. What is the scope of related services under the court's interpretation?
3. What ramifications do the courts and state level administrative decision interpretations have on a school system?
4. What provisions do the Florida Statutes and State Board of Education Administrative Rules make for the related services for handicapped students?
5. What does Florida law encompass on who can provide school health care services?
6. What are the Florida local education agencies presently providing for the handicapped under school health services?
7. What can administrators do to comply with these requirements?

Limitations

Of all the areas covered under related services, the most controversial services provided appear to be those that have a relationship to medical models, medical services, occupational and physical therapy, and school health services. However, transportation as a related service also presents unique problems when children with physical and medical problems are transported to and from school. Hence, due to the complexity of the foregoing services, this study was limited to the following related services: medical services, occupational and physical therapy, school health services, and transportation.

Definition of Terms

The following terms as stated in the Regulations were used throughout this study.

FREE APPROPRIATE PUBLIC EDUCATION means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge,
(b) Meet the standards of the State educational agency, including the requirements of this part,
(c) Include preschool, elementary school, or secondary school education in the State involved, and
(d) Are provided in conformity with an individualized education program which meets the requirements under Regs. 300.340-300.349 of Subpart C.[26]

HANDICAPPED CHILDREN means

Those children evaluated in accordance with Regs. 300.530-300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.[27]

INDIVIDUAL EDUCATION PROGRAM means

A written statement for a handicapped child that is developed and implemented in accordance with Regs. 300.341-300.349.[28]

QUALIFIED means

That a person has met state educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.[29]

RELATED SERVICES means

Transportation and such developmental, corrective, and other supportive sevices as required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

Audiology includes:

(i) Identification of children with hearing loss;
(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;
(iv) Creation and administration of programs for prevention of hearing loss;
(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss;
(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

Counseling Services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

Early Identification means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

Medical Services means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

Occupational Therapy includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
(iii) Preventing, through early intervention, initial or further impairment or loss of function.

Parent Counseling and Training means assisting parents in understanding the special needs of their child and providing parents with information about child development.

Physical Therapy means services provided by a qualified physical therapist.

Psychological Services includes:
(i) Administering psychological and educational tests, and other assessment procedures;
(ii) Interpreting assessment results;
(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

Recreation includes:
(i) Assessment of leisure function;
(ii) Therapeutic recreation services;
(iii) Recreation programs in schools and community agencies; and
(iv) Leisure education.

School Health Services means services provided by a qualified school nurse or other qualified person.

Social Work Services in Schools include:
(i) Preparing a social or developmental history on a handicapped child;
(ii) Group and individual counseling with the child and family;
(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and
(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

Speech Pathology includes:
(i) Identification of children with speech or language disorders;
(ii) Diagnosis and appraisal of specific speech or language disorders;
(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;
(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and
(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

Transportation includes:
(i) Travel to and from school and between schools;
(ii) Travel in and around school buildings; and
(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.[30]

SPECIAL EDUCATION means

> Specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, and instruction in hospitals, and institutions....
>
> (2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered 'special education' rather than a 'related service' under State standards.[31]

Procedures

To respond to the major questions presented in this study an historical and legal approach was utilized. The procedure included an analysis of related services litigation at the Judicial and State Education Administrative level, review of policy interpretations by the State Policy and Administrative Review Branch of the Division of Assistance to States, Bureau of Education for the Handicapped; and an analysis of Florida Law and related services provisions for children in the State of Florida.

The data was reviewed and analyzed for the period of 1975 through 1986; with the selected cases and State Administrative Decisions divided into the following categories: medical services, occupational therapy, physical therapy, school health services and transportation. Summary tables were presented with the selected cases and decisions organized chronologically. To determine present status of school health services for handicapped children in Florida, data was analyzed from the Florida State Department of Health and Rehabilitative Services and a statewide survey was also conducted specifically in the areas of suctioning and catheterization.

For related topics, a search was made of *Dissertation Abstracts, ERIC, Legal Resource Index, Florida Due Process Hearings,* and *Education for the Handicapped Law Report Indexes* for federal and state cases and policy interpretations.

Sources of Data

This study used primary sources to answer the questions presented in the purpose of the study. These sources included: Federal Laws and Regulations, Florida State Board of Education Administrative Rules, Edited Policy Letters by the United States Bureau of Education for the Handicapped, court cases, state level administrative decisions, and professional communications.

Footnotes for Chapter I

[1] Education for All Handicapped Children Act of 1975 (Pub. L. 94-142), 20 U.S.C., 89 Stat. 775 (1975).

[2] U.S. Congress, "To assure the Free Appropriate Public Education of All Handicapped Children, Eighth Annual Report to Congress on the Implementation of the Education of the Handicapped Act," by Madeleine Will (Washington, D.C.: Government Printing Office, 1986).

[3] *The Encyclopedia of Education*, 1971 ed., S.V. "Special Education and the Government," by Frederick J. Weintraub, p. 351.

[4] *Brown v Board of Education*, 347 U.S. 483 (1954).

[5] U.S. Congress, Senate, *Legislative History - P.L. 94-142, Education for All Handicapped Children Act*, S. Rept. 168 94th Cong. 1st sess., 1975 (Washington: CRR Publishing Company, 1979), p. 11:13

[6] *Brown v. Board of Education*, 347 U.S. 493 (1954).

[7] *The Encyclopedia of Education*, 1971 ed., S.V. "Special Education and the Government," by Frederick J. Weintraub, p. 352.

[8] *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (1971), 343 F. Supp. 279 (E.D. PA 1972).

[9] *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).

[10] *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (1971), 343 F. Supp. 279 (E.D. PA 1972).

[11] *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).

[12] *Id.*

[13] U.S. Congress, Senate, *Legislative History P.L. 94-142, Education for All Handicapped Children Act*, S. Rept. 96, 94th Cong., 1st sess., 1975 (Washington: CRR Publishing Company, 1979), p. 11:52.

[14] *Id.*

[15] "Education of Handicapped Children," *Federal Register* 41, No. 252, December 1976.

[16] Education of the Handicapped Act (Pub. L. 99-457), 20 U.S.C. Sec. 1401 (17) (1986).

[17] Wendy M. Cullar, "State Policy for the Education of Exceptional Students in Florida, 1869-1979" (Ed.D. dissertation, University of Florida, 1981), pp. 401-02.

[18] Florida, *Florida School Law, Statutes* (1983), Chp. 230.23.

[19] Florida, *Florida State Board of Education Administrative Rules*, FAC. 6A-6.0301 (1986).

[20] Florida, *Florida State Board of Education Administrative Rules*, FAC 6A-6.0311-6A-6.0325 (1986).

[21] Florida, *Florida State Board of Education Administrative Rules*, FAC 6A-6.0311 (1986).

[22] U.S. Congress, House, Subcommittee on Select Education, *Oversight Hearings on Proposed Changes in Regulations for the Education for All Handicapped Children Act*, 97th Cong. 2d sess., 1982, p. 503.

[23] Roberta Weiner, *P.L. 94-142: Impact on the Schools* (Arlington, VA: Capitol Publications, 1985), pp. 126-27.

[24] *Id.*

[25] *Id.* p. 327.

[26] "Education of the Handicapped Regulations," 34 C.F.R., sec. 300.4, (1986), *Education for the Handicapped Law Report* (Washington: CRR Publishing Company, 1986), p. 102:52.

[27] *Id.*, Reg. 300.5, p. 102:52.

[28] *Id.*, Reg. 300.340, p. 102:70.

[29] *Id.*, Reg. 300.12, p. 102:53.

[30] *Id.*, Reg. 300.13, pp. 102:53-54.

[31] *Id.*, Reg. 300.14, p. 102:55

CHAPTER II

SELECTED REVIEW OF RELATED LITERATURE

This review of the literature concentrated on the parameters and deregulation movement of related services in public schools in the United States. Therefore, as Prasse states:

> The importance of continuing dissemination, professional review, and knowledge acquisition of legal influences impacting service delivery cannot be overrated. The law is not fixed nor static. Rather it is fluid and dynamic. To that end, we must continuously work to stay abreast of evolving changes, so our professional practice remains within legally established parameters - parameters which ideally ensure the foundations necessary for providing services to handicapped persons.[1]

Since the implementation in 1977 of the Education for All Handicapped Act (P.L. 94-142), there has been an inherent problem with what constitutes a related service. This is attributed to the unsubstantive language in the law and that the list of related services is not exhaustive and may include:

> Other developmental, corrective, or supportive services (such as artistic and cultural programs, art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education.[2]

Section 504 of the Rehabilitation Act of 1975 also provides for special education and related services to meet the individual educational needs of handicapped children for a free appropriate public education.[3] The Act states:

> No otherwise qualified handicapped individual in the United States, as defined in section 706(6) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[4]

If an alleged violation occurs under section 504, the office of Civil Rights will investigate the complaint and if the discrimination is founded, take whatever action is necessary for compliance. If noncompliance continues, Federal financial assistance would be denied, and at the court's discretion, attorney's fees may be awarded to the prevailing party for any action or proceeding to enforce the violation.[5]

One of the most significant events to occur in the history of Public Law 94-142 was the attempt in 1982 to deregulate certain existing regulations; with some major changes, particularly in the provisions for related services.

In testimony given by Terrel H. Bell, Secretary, U.S. Department of Education, on August 10, 1982, before the Senate Subcommittee on the Handicapped, he stated that the proposed regulations in accordance with the beliefs of the Department of Education would faithfully carry out the statutory purposes, improve the process, insure appropriate benefits and protections for the handicapped and promote greater efficiency and flexibility for those in administering programs.[6]

Secretary Bell appeared at the Oversight Hearings on Proposed Changes in Regulations for the Education for All the Handicapped Children Act on September 29, 1982, and made the following statements:

> I can tell the committee that I don't know of any legislation,...and of all the Federal legislation, the one that has generated the most debate, and the most lititgation, is Public Law 94-142.
>
> I would just point out that these regulations that we are debating are in effect a bit of lawmaking by the bureaucracy and they exceed your statutes and so that presents a real concern and dilemma to us.[8]

It is noteworthy to mention that in the spring of 1982, Joe Beard, Deputy Chief for Office of the General Counsel, United States Department of Education, sent Tom Anderson, Special Counsel to Secretary Bell, a note concerning possible congressional opposition to the deregulation efforts of P.L. 94-142. An excerpt from the note is as follows:

> The law requires that we send up our final regulation for approval by the Congress, but it does not say we have to send it up all in one part. Might it be a good idea to consider sending it up in two or more packages, with the less controversial part in one package, and the more controversial parts in several packages? In this manner, certain controversial parts will not kill off the less controversial parts, and, also we may be able to divide the enemy.[9]

The proposed changes in the related service regulations implementing P.L. 94-142 as listed in the Federal Register were the deletion of some "related services" and their definitions. However, new subsections were added which stated:

> a public agency is not required to provide life sustaining procedures that can be provided outside of the normal school day, must be administered by specially trained, licensed health care professionals or entail a significant risk of illness or more than minimal injury.

Additionally, the regulations allowed public agencies to impose:

> "reasonable limitations" relating to the level, frequency, and duration of the services required, the qualifications of the providers of those services, and services required in light of the educational placement appropriate for the child.[10]

A comment follows the proposed regulations which state:

> This definition of related services is significantly different from that in the present regulations. It raises some questions concerning whether...clean intermittent catheterization (CIC) would still be required...'the secretary does not intend that these regulations categorically preclude the provisions of (CIC)...services on the grounds that they are medical services. Rather the secretary intends that public agencies determine whether these services are required on an individualized basis.' To the extent that the regulations would preclude CIC...they might be in conflict with judicial decisions on these subjects...*Tatro v. State of Texas*, 625 F. 2d 557 (5th cir. 1980), where the court found that P.L. 94-142 required CIC.[11]

Throughout the three days of hearings on the proposed regulations there was an outpouring of concerned individuals and groups testifying on behalf of the rights of handicapped children. Over and over again, it was affirmed that the proposed regulations would do little more than erode the original intent of P.L. 94-142. The testimony of some of those individuals is as follows:

Martin Gerry, Attorney, stated:

> Proposed changes in the current definition of related services would insert a totally incomprehensible standard for determining when a service 'is required to assist a child to benefit from special education' which would be absolutely certain to be the subject of extensive and frustrating litigation between parents and school districts. The concept that a child's need for a service can be limited by the availability of the service is bewildering.[12]

Mary Ciminelli, on behalf of the Association on Handicapped Student Services Programs in Post Secondary Education, stated:

> By allowing educational agencies to define related services and adopt 'reasonable limitations' disabled children will be deprived

> of services to which they are currently entitled. States could broadly and extensively restrict the availability of services regardless of need... This regulation will make it impossible for them to remain in a regular educational setting, requiring extremely costly and segregated education of these children.[13]

Phyllis Blaunstein, Executive Director of the National Association of State Boards of Education, stated:

> We believe that changes in this area should reflect those requirements intended by the statute. Within this framework, we encourage the department to develop regulations which clearly state the responsibilities of state and local agencies as well as other agencies involved in the care of handicapped children.[14]

Beatina O'Carroll, Executive Director of the Southwest Louisiana Health Counseling Service, stated:

> For many children, related services are the only educational services appropriate for a child. Any lessening of the requirements regarding related services, I fear, eliminate services necessary to the education of many children.

It is believed that the simplified definition of medical services from 'services provided by a licensed physician' to 'service relating to the practice of medicine' will again confuse the mandate of the Act and permit school systems to avoid rendering services necessary to the education of many handicapped students.[15]

The Subcommittee on Select Education wrote to Secretary Bell on October 20, 1982, addressing concerns and the findings of individuals during the comment period for the proposed regulations. The correspondence states:

> State and local school district representatives wrote that increased flexibility would not be guaranteed and administrative burdens would not be substantially decreased.... Advocacy groups questioned how the proposed changes could co-exist with currently accepted levels of service delivery and parental rights. Parents...expressed strong concern that less federal regulation would constitute a license for regressive practices. In general, the consensus of those from whom we heard...would encourage mistrust as well as increased litigation.[16]

Additionally, the correspondence continues to address Related Services as follows:

> The notion of 'reasonable limitations' as to the level, frequency, location and duration of related services provided would allow local education agencies (LEA's) the means for setting blanket policies and, ultimately, for denying appropriate services based on individual needs. Existing resources rather than need could easily dictate the quality and quantity of related services; in particular, handicapped children living in urban and rural areas would suffer the consequences of such actions.[17]

In December of 1982, in a written correspondence from Secretary Bell to Austin Murphy, Chairman of the Subcommittee on Select Education, Secretary Bell reported that due to public comment, the proposed related services regulations were being withdrawn.[18]

The subcommittee concluded that:

> The committee does not agree with the Administration that these proposed regulatory changes in Public Law 94-142, the Education for All Handicapped Children Act, reaffirm the 'right' granted to handicapped children in 1975. While they acknowledge that some slight changes in the existing regulations may be indicated, they feel strongly that these proposed regulations are not consistent with the Education of the Handicapped Act and if published as final regulations in their present form, could be subject to rejection.[19]

P.L. 94-142 was amended to P.L. 98-199 in 1983 to include amendments to such sections as participation of Handicapped Children in Private Schools, Early Education for Handicapped Children, Secondary Education and Transitional Services for Handicapped Youth and Evaluation. In the evaluation section, the Secretary of Education is required to provide the Congress with information pertinent to policy-making.[20]

A specific area of concern according to Gottlieb is the problem occurring in the deinstitutionalization of handicapped children caused by the limited experience of the professionals in this area.[21] Also cited is the availability of community resources as being a problem for local school districts. He states that these barriers could include, but are not confined to, the following:

1. Availability of space. Many local school districts may not have the necessary space to accommodate additional children into school buildings.
2. Lack of necessary personnel. A considerable number of handicapped children require physical therapy or nursing care

during the day. Many schools simply do not have these personnel...

3. Lack of appropriate transportation. Since many handicapped children are confined to wheelchairs, special buses or vans are necessary to transport them. There may not be enough of the vehicles to transport the number of children who need them.
4. Lack of suitable educational materials. The school may not have the necessary educational materials for severely handicapped children.[22]

In recent research, Osborne concluded that because related services are expensive, controversy and litigation may be expected to continue in this area.[23] In examining the courts interpretation of related services in *Tokarcik v. Forest Hills*, 1981; *Hawaii v. Katherine D.*, 1982, and *Tatro v. State of Texas* (1980), he found that:

> ...health services which can be performed by the school nurse or another trained person may be considered required related services. Again, state medical laws dictate who is and is not allowed to provide medically related services. School systems may be required to provide catheterization, health services to a student with a tracheostomy tube,and similar services if state law permits trained health personnel to perform these functions.[24]

He further concluded under *Board of Education v. Rowley* (1982) that the court's decision has implications for the provision of related services, in that:

> ...if the student is already benefiting from special education, under the *Rowley* standard no additional supportive services would be required. The courts have not required that school systems provide each and every special education service that would be helpful to a handicapped child.[25]

In reviewing *Tatro* and *Rowley*, Turnbull summarized that these decisions:

> ...recognize the necessity of related services for appropriateness. And they emphasize the child's right to and need for an appropriate (beneficial) education. In these respects, schools' behaviors and functions are properly required to be child-centered and appropriately individualized.[26]

In addition he states:

> ...the cases also require a relatively new function of schools to take on some of the responsibilities of other agencies. The value is integration. The objective is to prevent exclusion.
>
> Just how far the courts will pursue these behavior-shaping and function-changing principles and values remains to be seen.[27]

In analyzing *T.G. and P.G. v. Board of Education of Piscataway* (1983), the court held that an emotionally disturbed child was entitled to psychiatric services because a qualified social worker under the supervision of a psychiatrist was providing the services. Vitello concluded that:

> Whether a particular medical service is excludable or not is determined by who provides the service, not the type of service per se. The licensing of school nurses and other school personnel (e.g., social workers) regarding which medical services/procedures they can provide may ultimately determine the scope of the related service requirement under the EHA.[28]

Consistent with this conclusion in a recent court decision in *Detsel v. Auburn* (1986), where a severely physically disabled child required constant respirator and oxygen monitoring, the court held:

> Where necessary school health services are complicated, require the skill of trained health professionals, are beyond the competence of a school nurse, and would subject school to excessive costs and burden, they are not 'related services' within the meaning of EHA, 20 U.S.C. 1401-(17).[29]

In discussing the medical profession's controversy over what traditional physician services can be provided by paraprofessionals and nurses, Vitello states:

> The number of medical procedures that can be performed by nurses and physician's assistants has increased. A consequence of this development may be that handicapped children with medical problems who were once excluded from school programs may now be provided access since certain medical services can be performed by qualified personnel who are not physicians.[30]

Transportation is distinctly cited as a related service in P.L. 94-142 in order for handicapped children to benefit from special education. The court issues appear to focus around the extent of those services. In *Kennedy v. Board of Education, McDowell County* (1985), where spina bifida children were denied transportation to their homes on a private road, the court held that the school district's failure to provide this transportation denied them equal protection of the laws.[31]

The "Benefit Theory" is a standard used in court decisions to determine if a handicapped child needs a related service to benefit from special education. State Educational Agency hearing officers also use this as a standard in their decisions. In California, a hearing officer held in the case of a severely mentally retarded child whose parents contended needed physical and occupational therapy that:

> ...student required therapy in order to benefit from special education because functional movement and balance skills being developed are required for educational progress.[32]

Similarly, in an Illinois case the decision of the local hearing officer was reversed when the state level review panel held that a semi-comatose child could not benefit from educational services. The review panel concluded:

> ...so long as the child remains in his present condition, he can not benefit from educational services and is not entitled to their provision under federal and state law.
>
> Although the child is undoubtedly in need of services, they are not educational in nature. It is not the district's responsibility to provide physical therapy or other related services to a child having no special education needs. This is clear from a comment to the federal regulations.[33]

In reviewing legal precedents in cases involving children with severe handicaps, Lehr and Haubrich concluded:

> Related services will continue to evoke questions about the extent and meaning of the law. The law itself provides few substantive standards for what a related service is and to what extent these services should be made available. For students with severe handicaps the courts will have to rely heavily upon professional knowledge when dealing with a dispute over whether a service is or is not a necessary related service.[34]

Another consideration determining the appropriateness of related services for handicapped children is the individual state statutes which govern provisions such as medical services. Pruitt concluded in his research that:

> Additional research needs to be conducted in what medical law recognizes as medical services in various states.This would provide a clearer understanding of what school districts are obligated to provide and what students are entitled to receive.[35]

[1] David P. Prasse, "Litigation and Special Education: An Introduction," *Exceptional Children* 52 (January 1986), 311

[2] Education of the Handicapped Regulations," 34 C.F.R., sec. 300.13, *comment* (1986). 1 E.H.L.R. (1986), p. 102:54

[3] "Section 504 Regulations," 34 C.F.R. Part 104, 1980. 1 E.H.L.R. (1985), p. 131:11

[4] "Rehabilitation Act of 1973," 29 U.S.C. sec.794, 1 E.H.L.R. (1985), p. 131:11.

[5] *Id.*

[6] U.S. Congress, House Subcommittee on Select Education, *Oversight Hearings on Proposed Changes in Regulations for the Education for All Handicapped Children Act*, 97th Cong., 2d sess., 1982, pp. 111-12.

[7] *Id.*, pp. 115-16.

[8] *Id.*, p. 119.

[9] *Id.*, p. 1661.

[10] *Id.*, pp. 220-21.

[11] *Id.*, pp. 221-22.

[12] *Id.*, p. 98.

[13] *Id.*, p. 261.

[14] *Id.*, pp. 503-04.

[15] *Id.*, p. 876.

[16] *Id.*, pp. 198-99.

[17] *Id.*, p. 199.

[18] *Id.*, p. 171.

[19] *Id.*, p. 4.

[20] Education of the Handicapped Act (Pub. L. 98-199), 20 U.S.C. 1400, 97 Stat. 1357 (1983).

[21] Jay Gottlieb, "Placement in the Least Restrictive Environment," *Exploring Issues in the Implementation of P.L. 94-142: Developing Criteria for the Evaluation of the Least Restrictive Environment Provision* (Philadelphia: Research for Better Schools, Inc., 1979), p. 163.

[22] *Id.*, p. 166.

[23] Allan G. Osborne, Jr., "How the Courts Have Interpreted the Related Services Mandate," *Exceptional Children* 51 (November 1984), 249.

[24] *Id.*, p. 250.

[25] *Id.*, p. 251.

[26] H. Rutherford Turnbull, III, "Appropriate Education and Rowley," *Exceptional Children* 52 (January 1986), 535

[27] *Id.*, p. 352.,

[28] Stanley J. Vitello, "The Tatro Case: Who Gets What and Why, *Exceptional Children* 52 (January 1986), 355

[29] *Detsel v. Auburn*, 4 E.H.L.R. 557:335 (ND NY 1986).

[30] Stanley J. Vitello, "The Tatro Case: Who Gets What and Why," *Exceptional Children* 52 (January 1986), 355-56

[31] *Kennedy v. Board of Education, McDowell County*, 3 E.H.L.R. 557:232 (WV 1985).

[32] *Los Angeles Unified School District*, 3 E.H.L.R. at 507:118 (Ca. 1985).

[33] *Case No. SE-53-81*, 3 H.L.R. at 506:240 (Il. 1984).

[34] Donna Lehr and Paul Haubrich, "Legal Precedents for Students with Severe Handicaps," *Exceptional Children* 52 (January 1986), 361.

[35] Robert Allen Pruitt, *The Scope of Related Services Under the Education for All Handicapped Children Act* (Ed.D. dissertation, University of San Francisco, 1983), p. 217.

CHAPTER III

SELECTED REVIEW OF COURT DECISIONS PERTAINING TO RELATED SERVICES

Case law has served as a precedent in providing direction for many "related services" issues. When the court makes decisions it not only interprets the statutes, analyzes the facts as they relate to the statute, but in addition reviews the intention of the legislature when they enacted the statute.

As case law in related services continues to evolve, our understanding of the parameters of these services will be more fully understood.

The complexity of this issue is presented in the following significant cases.

The following case *Irving Independent School District v. Tatro*[1] is the first "related service" case under the Education of the Handicapped Act to be heard by the United States Supreme Court.

Irving Independent School District v Tatro

Issue

Whether catheterization is a related service under EHA.

Findings of Fact

The student who was identified and classified as orthopedically handicapped suffers from a condition known as spina bifida. As a result of her disability, she is unable to voluntarily empty her bladder and requires Clean Intermittent Catheterization (CIC). Whereas, a catheter tube is inserted into the urethra to drain the bladder. To avoid injury to her kidneys, this procedure, which can be done by a trained lay person, must be done every three or four hours.

An Individualized Educational Program (IEP) was developed for the student which included occupational and physical therapy and speech services. However, the school district failed to make provisions for CIC. In refusing the CIC services, the school district contended it was a medical service and therefore not required under EHA or their state law.

The parents argued that CIC was a related service and filed for a due process hearing. The hearing officer held that under EHA the school district was required to provide for CIC. The State Commissioner of Education affirmed the hearing officer's decision. The school district appealed to the State Board of Education who reversed the decision holding that CIC was medical treatment. The parents filed suit in Federal District Court, whereas the court concluded that:

> One can argue that read literally, every necessary life support system must be furnished. But the court has found no congressional intent to sweep broadly in its usage of the word 'related.' Instead, the court finds that to be related in the statutory sense, the service requirement must arise from the effort to educate. There is a difference between maintenance of life systems and enhancing a handicapped person's ability to learn.[2]

The parents appealed the Fifth Circuit Court of Appeals. The Court reversed the decision and held:

> As the District Court correctly observed, CIC falls within a literal interpretation of the statutory definition of related services. Quite simply put, [the child] cannot benefit from the special education to which she is entitled, for, without CIC, she cannot be present in the classroom at all. Thus, CIC is a supportive service required to assist [the child] to benefit from her special education.[3]
>
> ...EAHCA contains its own limitations on the type of life support services that must be provided as related services. First, in order to be entitled to any related services at all, a child must be handicapped so as to require special education...Second, the life support service must be necessary to aid a handicapped child to benefit from the special education to be provided...Thus, a life support service would not be a related service if it did not have to be provided during school hours, but instead could be performed at some other time...Third, in order to be a related service, the life support service must be one which a nurse or other qualified person can perform.[4]

The Court of Appeals remanded the cases to the District Court. In reviewing a brief submitted on the Texas Medical Practice Act, the court held that a physician:

> may prescribe treatment to be performed by another individual or an institution if he/she believes that individual or institution is capable of providing the prescribed service in a competent manner.[5]

Further the court held:

> This court does not hold that CIC can only be performed lawfully by professional nurses. Lay persons, with proper medical training, may, in accordance with a valid prescription, provide treatment that without such training and prescription would be

> considered unlawful practice of medicine...Provided the physician has ascertained that such training is sufficient to qualify a person to perform CIC, he can prescribe CIC to be furnished by a school district through its professional nurses or those non-nursing employees who have received such training.[6]

The District Court also ordered the school district to include provision for CIC in the student's individualized educational program.

The Court of Appeals affirmed this decision and the school district asked the Supreme Court to review the case.

Conclusions of Law

In answering the questions whether CIC was a "supportive service and if it was excluded from the definition of a medical service," the Supreme Court held:

> It is clear on this record that, without having CIC services available during the school day, [the child] cannot attend school and thereby "benefit from special eduction." CIC services therefore fall squarely within the definition of a "supportive service."[7]
>
> A service that enables a handicapped child to remain at school during the day is an important means of providing the child with the meaningful access to education that Congress envisioned...Services like CIC that permit a child to remain at school during the day are no less related to the effort to educate than are services that enable the child to reach, enter or exit the school.[8]

In rationalizing why CIC was not a "medical service," the court stated that the nurses in the school district:

> are authorized to dispense oral medications and administer emergency injections in accordance with a physician's prescription. This kind of service for nonhandicapped children is difficult to distinguish from the provision of CIC to the handicapped. It would be strange indeed if Congress, in attempting to extend special services to handicapped children, were unwilling to guarantee them services of a kind that are routinely provided to the nonhandicapped.[9]

The court, therefore, found CIC a "related service" under the EHA.

Chief Justice Burger noted several limitations in a school district obligation in providing services to meet the health and educational needs of the handicapped.

First, to be entitled to related services, a child must be handicapped so as to require special education. Second, only those services necessary to aid a handicapped child to benefit from special education must be provided, regardless of how easily a school nurse or lay person could furnish them. For example, if a particular medication or treatment may appropriately be administered to a handicapped child other than during the school day, a school is not required to provide nursing services to administer it. Third, the regulations state that school nursing services must be provided only if they can be performed by a nurse or other qualified person, not if they must be performed by a physician.[10]

Order

The school district is to provide clean intermittent catheterization as it is a related service.

In referencing *Smith v. Robinson*[11] the Supreme Court also held that the parents were not entitled to attorney's fees under Section 504 of the Rehabilitation Act as relief was available under EHA.

The same issue in another case of CIC as a related service was decided by the United States Court of Appeals. However, in this case, the services being requested were to enable the child to participate in a regular educational program.

Tokarcik v. Forest Hills School District

Issue

Whether Clean Intermittent Catheterization (CIC) is a related service under the Act and whether CIC services are required in a regular classroom setting.

Findings of Fact

The student who suffers from spina bifida is paralyzed from her waist down. Due to her condition, she is unable to void naturally and requires clean intermittent catheterization (CIC) assistance every three or four hours. When she entered kindergarten the parents requested the school district personnel to perform the catheterization. Upon the school district's refusal to provide the service, the family went to school each day to perform the necessary catheterization.

To settle the dispute, the parents filed for a due process hearing. The hearing officer held that the school district was not required to provide CIC. The Department of Education affirmed the decision of the hearing officer.The parents then filed suit in Federal District Court alleging violation of Section 504 of the Rehabilitation Act and EHA.

Based on the school district's recommendation, the parents took their child to be examined by an occupational therapist. Whereas, an occupational therapy program was recommended which included instruction and supervision in self-catheterization.

Objecting that catheterization could be characterized as occupational therapy, the school district said it was "ridiculous," "that voiding the bladder constitutes an occupational skill."[12] Chastising the school district, the court stated:

> We think defendants demonstrate an insensitivity to the special problems of the handicapped. Obviously, it is more typical to think of an occupational skill as the ability to type or to drive a truck or to draft a complaint. But surely, if we look closer, behind these very specialized skills is a broad range of everyday skills, equally as important to success on the job, such as the ability to move from place to place, to communicate in one way or another, and to attend to our personal body needs, including voiding of the bladder. It is difficult to imagine an employer hiring an individual who could not attend to his own body functioning.[13]

Additionally, the court said that teaching her to compensate for her disability through instruction in self-catheterization was occupational therapy. Also, if she was never able to be taught catheterization, the court found it was a school health service.

Concurring with the Fifth Circuit in *Tatro*,[14] the court likewise found "catheterization to be a health service, and thus, a supportive service" required for her to benefit from special education.[15]

Addressing mainstreaming, the court stated:

> We cannot believe that Congress intended for a child who is perfectly able to benefit from every aspect of a normal education to be excluded from the classroom because of a problem as easily solved as this one. The concept of mainstreaming has admittedly come under criticism recently...But the critics concentrate on the heavy burden placed on the classroom teacher by the presence of a sometimes disruptive handicapped child who requires extraordinary attention and care. [She] places absolutely no burden on her teacher whatsoever.[16]

On appeal to the Third Circuit Court of Appeals, the court affirmed the lower court's decision. However, they were more explicit in defining what the statutory language of the Act required.

The school district contended that CIC was not a "related service" because it was not connected with a special education program and because it was not an educational service; it was a medical service.

Additionally, under Pennsylvania law, school nurses were not required to perform catheterization.[17]

The parents rejected the homebound program placement and initiated a Due Process hearing. The hearing officer found the DOE was responsible for the child's tuition at the parochial child care center for the 1980-81 school year and further found that:

> the nonavailability of a public preschool program capable of responding to [the child's] health needs did not absolve the DOE of its responsibility to provide her with a preschool program under the EAHCA.[23]

An IEP conference was held in September of 1981. The proposed placement offered to the parents for their child was a regular kindergarten classroom with itinerant speech therapy. At this meeting, DOE outlined procedures that would be followed for dislodging of her tracheostomy tube, suctioning, and medication needs.

Anticipating her enrollment, school personnel attended a training session on the child's disability and procedures for reinsertion of the tracheostomy tube. The consultant for the training session was the child's attending physician. There was an uncooperative attitude of this school personnel during the training session. Their fears were later expressed by the filing of a grievance charging that the duties that were to be performed were of a medical nature and not within their contractual obligations.

The District Court affirmed the hearing officer's decision and held that the reinsertion of a tracheostomy tube is a school health service, thus is a related service within EAHCA.

The evidence showed:

> (1) that but for the possibility of physical harmful problems with her tracheostomy [the child] should be in a regular school; (2) that the aid [the child] needs can be - and for some years - has been provided by trained lay people; (3) that the necessary skills can be learned at no cost in a matter of hours; (4) that if a trained person is at hand [the child] can attend school.[24]

Additionally, the least restrictive environment for this child was not the homebound program but the private child care center, and therefore, the State Educational Agency was responsible for tuition reimbursement. Under Section 504 the parents were also awarded attorney's fees and costs.

The DOE appealed the District Court decision on all accounts.

Conclusions of Law

In defining "related services" the Appellate Court held that the care involved of the tracheostomy tube fell within "school health services" and that the "least restrictive environment" must be provided for these services under EAHCA.

Discussing the DOE's obligation of providing a special education program under the EAHCA, the court cited *Rowley*:[25]

> furnished handicapped children with only such services as are available to nonhandicapped children would in all probability fall short of the statutory requirement of 'free appropriate public education,' to require on the other hand, the furnishing of every special service necessary to maximize each handicapped child's potential is, we think further than Congress intended to go.[26]

Furthermore, the court concluded:

> that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.[27]

In referring to the 1980-81 school year, the court agreed with the District Court in that the homebound program offered was not appropriate and did not satisfy the concept of the "least restrictive environment."[28] Rationalizing that the services required could be provided in the public school setting by a "school nurse or other qualified person."[29] Noting it was "indisputable that even a lay person could have been trained to provide the services."[30] In the DOE's challenge of the private school tuition reimbursement, the court referred to *Anderson v. Thompson*[31] and stated:

> the court recognized that damages might be recoverable in certain 'exceptional circumstances,' and cited illustratively two situations, 'in which a limited damage award might be appropriate' first, when the 'child's physical health would have been endangered had the parents not made alternative arrangements to those offered by the school system,' and second, when the 'defendant has acted in bad faith by failing to comply with the procedural provisions of [the Act].'[32]

Basing the case on "exceptional circumstances," the court held that:

> an unexplained failure to offer a child placement in a classroom with his/her peers when the child clearly demonstrated his/her ability to function in a classroom environment entitles the child to recover the cost of a private school education until an appropriate program is devised.[33]

The court reversed the District Court decision for the 1981-82 school year finding that there was insufficient evidence to show that the child would not have received emergency care and therefore the proposed placement was a "free appropriate public education."

Additionally, the District Court's award of attorney's fees was reversed reasoning that the comprehensive remedial provisions under the EAHCA preclude an award of attorney's fees under 42 U.S.C. S 1983 or the Rehabilitation Act, 29 U.S.C. S 794 a(b).

In a dissenting opinion as to the decision of a free appropriate public education for the 1981-82 school year, Judge Reinhardt wrote:

> The Act certainly does not require parents to risk their child's life pending a conclusive showing that the essential services would not be provided. In life-and-death situations such as the one involved here, a reasonable doubt whether the services would be provided is enough to justify parents in refusing to enroll their child in school.[34]

Conclusion of Law

The Court rationalized that:

> Because special education specifically contemplates instruction in a regular classroom, related services necessarily include what is required within reason to make such a setting possible for a child who can benefit from it. Since an appropriate education for a physically handicapped child with a normal intellectual capability aims at promoting achievement roughly equivalent to that of her nonhandicapped peers, special education for [her] should entail classroom instruction, for the nature of her handicap is not so severe as to preclude the possibility of education in a regular environment. See 20 U.S.S. S 1412 (5).[18]

Furthermore, the court reasoned that handicapped people benefit from transportation and supportive services and may be critical outside the educational setting that "related services" need not be education—specific.[19]

In referencing *Tatro* the court stated:

> ...the EAHCA contained its own limitations which circumscribed the types of life support systems which must be furnished as related services. Not only must the life support service be one a nurse could administer and be needed for the child to benefit from the prescribed special education, but if it could be performed solely outside school hours, it would not qualify as a related service.[20]

Further:

> Like many cases under EAHCA, the present conflict arises from the Act's maximum integration or "mainstreaming" requirement and the schools claim that the services required to achieve that goal would cause teachers to neglect the needs of other students and divert funds from special programs most helpful to the handicapped. It should therefore be underscored that providing [her] with CIC will advance the mainstreaming principle embodied in the EAHCA in an extremely cost-effective manner without adversely affecting any involved parties.[21]

The court concluded:

> By providing the CIC service, the school would thus be educating [her] to perform the service herself and helping her to become the independent, productive citizen contemplated by the Act.[22]

Order

The order of the District Court is affirmed directing the provision of CIC as a related service.

The important points in this case are that catheterization was not only determined to be a school health service under related services, but also that instruction in self-catheterization may be considered to be an occupational therapy service.

Additionally, if the regular classroom setting is the least restrictive environment for a handicapped child, related services must be given so the child can benefit from the placement.

"School health services" was further defined to include tracheostomy care in the following case.

Department of Education, State of Hawaii v. Katherine D.

Issue

Whether a school district is responsible for suctioning a child's lungs and reinsertion of her tracheostomy tube under Related Services.

Findings of Fact

This issue was brought before the Federal District Court for review and the Appellate Court.

The four-year-old handicapped child who suffers from cystic fibrosis was identified as "other health impaired" and found eligible for special education services under the EAHCA.

In 1981, a diagnostic examination revealed that the child had tracheomalacia, which causes the walls of her windpipe to be floppy and not rigid. In 1978, she had a tracheostomy and a tracheostomy tube was inserted which allows her to breathe and expel secretion from her lungs.

Since her tracheostomy, there have been instances where her tracheostomy tube has become dislodged. In one instance, while hospitalized, her physician experienced difficulties reinserting the tracheostomy tube.

Due to her condition she is unable to vocalize normally. Although her speech is audible, it is very soft. Also, her cystic fibrosis condition causes thick mucus to collect in her lungs, which make her susceptible to pulmonary infections. Her inability to cough this mucus up herself necessitates suctioning through her tube.

Her speech difficulty is considered the only condition that adversely affects her educational performance. If it were not for the possible danger to her tracheostomy tube becoming dislodged, she could have been educated in a regular education class with itinerant speech therapy services.

During the 1980-81 school year she attended a parochial child care center. She did well academically and socially in her preschool program there. Speech therapy services were given to her through an Elks project.

Her mother was a teacher at the parochial school and had the sole responsibility of administering her medication and suctioning her when necessary. Her enrollment at this school for the kindergarten class during the 1981-82 school year was contingent upon the mother continuing as a staff member.

However, the parents wanted her to attend the public school and be educated in a regular education class, with itinerant speech and language services. Due to her health problem, the parents would only allow her to attend if provisions for her health needs were met. A trained person would have to be available to suction when necessary and reinstate her tracheostomy tube in the event it became dislodged. Additionally, medication would have to be administered before lunch.

In 1980, the Department of Education (DOE) conducted an evaluation and concluded that the child was eligible for special education and related services. An Individual Education Program was developed and her educational placement was to be at an orthopedic school. However, that placement offer was rescinded by the DOE based on the recommendation of a medical doctor who was a DOE administrator responsible for the School Health Program Branch.

The rationale being that to assure for her safety, the educational setting did not have the personnel, equipment or medical expertise necessary for her welfare.

Based on this information, the DOE then offered a homebound program which included one and one-half hours of speech therapy and forty minutes of parent counseling per week.

Order

The DOE is responsible for the private school tuition reimbursement for the 1980-81 school year. The District Court decision for tuition for the 1981-82 school year and the award of attorney's fees is reversed.

In analyzing this case, it is clear that tracheostomy care is a "related service" within "school health services" under the Act. These services must be provided in the "least restrictive environment" and individually designed to provide an educational benefit to the student. Furthermore, tracheostomy care may be performed by a school nurse or other qualified person which could be a trained lay person.

Noteworthy in this decision is also the court's reference to *Anderson v. Thompson*, whereas, any award for damages under certain "exceptional circumstances" was addressed. This twofold criteria is:

> ...first, when the 'child's physical health would have been endangered had the parents not made alternative arrangements to those offered by the school system,' and second, when the defendant has acted in bad faith by failing to comply with the procedural provision of [the Act].[35]

At the time of this decision, attorney's fees were precluded under EAHCA, however, with the 1986 Handicapped Children's Protection Act (P.L. 99-372) an award of attorneys' fees would be given based on the same facts.

A noteworthy decision was recently made by a New York court. In the *Detsel* case, the extent and complexity of nursing care required were considered beyond the scope of "health services" under the EAHCA.

Detsel v. Board of Education of the Auburn Enlarged City School District

Issues

Whether the school district has to provide the student with constant nursing care under "related services."

Whether the services in question are "supportive services," "health services," or "medical services."

Finding of Facts

The student is a seven-year-old child who has severe physical disabilities. She attends a public elementary school where she receives special education services in a multiple handicapped class. Her suggested Individual Education Program (IEP) listed under "related services," including speech and language therapy, physical and occupational therapy, adaptive physical education and "appropriate school health services." Due to her disability, she requires constant respirator assistance and a continuous supply of oxygen in order to survive. The Department of Social Services had paid for her nursing services prior to her attending kindergarten but refused to continue payment for nursing services during school hours. The Board of Education agreed to pay for the necessary services in school while other sources of payment were sought. The parents filed for a Due Process hearing, pursuant to 20 U.S.C. Sec. 1415(b) when they were informed that the school district would not pay for the extensive nursing care required.The hearing officer held that the nursing care did not constitute a "related service" under the Education of All Handicapped Children Act (EAHCA) and the school district was responsible for the provision of these services. The decision was appealed to the New York State Commissioner of Education who reversed the local hearing officer's decision. The commissioner found that the services in question were not considered "related services" under EAHCA. The parents then sought judicial review of that decision. The parents asked the court to hold that the services sought were "supportive services" required to assist their child to benefit from special education. They contended that because the procedures required may be performed by a qualified person other than a physician that it constitutes a "school health service" not a therapeutic service within EAHCA.[36]

Court records indicated that the nursing care procedure to be followed with the student included: a vital sign check, medication administered through a tube to her jejunum, cardiopulmonary resuscitation, if necessary, and a "P.D. and C." procedure which includes the ingestion of saline solution into her lungs, then striking her about the lungs and suctioning out any mucus collected in her lungs.[37]

However, the school district asked the court to consider the type of service required rather than the qualifications of the individual performing the service.

Conclusions of Law

The court acknowledged that in *Irving Independent School District v. Tatro*[38] the Supreme Court did, in fact, hold that the provision of Clean Intemittent Catheterization (CIC), described as a simple procedure, was a "supportive service" within the EAHCA and therefore "required to assist a handicapped child to benefit from special education."[39] It was further stated in that case that CIC was not an excluded medical service.

However, the court stated that the case before it was decidedly different from the situation in *Tatro*:

> The care essential for Melissa's well being is complicated and requires the skill of trained health professionals. In its analysis, the Supreme Court recognized that although meaningful access to education must be afforded handicapped children, medical services which would entail great expense are not required...Congress had intended to 'spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence,' and upheld the limitation of the 'medical services' exclusion to the services of a physician or hospital which, it noted, were far more expensive than school nursing services.[40]

The court reasoned that the disputed services:

> do not fall squarely within the terms of the 'medical services' exclusion because they need not be performed by a physician, nor do they qualify as simple school nursing services...The extensive, therapeutic health services sought...more closely resemble the medical services specifically excluded by Sec. 1401 (17) of the EAHCA.[41]

Order

Under the EAHCA, the Board of Education is not required to provide constant in-school nursing care for a severely physically handicapped child as it does not qualify as a related service.[42]

The Federal District Court's decision appears to be based upon the complexity of the services required, the necessary competencies of the individual to perform the care which they believed were beyond a school nurse and the excessive costs placed upon the school district. Therefore, health services which are extensive may be considered more medical in nature and hence, excluded by EAHCA.

The question of the need for physical therapy was addressed in

Maurits; whereas the court's decision relied upon whether the therapy would enable the student to benefit from his education.

Maurits v. Board of Education of Harford County

Issue

Whether a student suffering from hemophilia is required to be provided physical therapy as a related service.

Findings of Fact

The court dismissed claims under Section 504 and Section 1983. Administrative relief was sought under the provisions of EHA.

When the student was in fourth grade it was determined through a physical therapy evaluation that due to the student's physical limitations with his right knee, elbow movements, and handwriting, that physical therapy was appropriate. Services were initiated for once a week.The student also participated in noncontact activities in the regular physical education program. Upon reevaluation in the sixth grade his physical therapist recommended to the evaluation committee that his services be discontinued because no "activity or educational endeavor" was affected by his "slight joint limitations and muscle weaknesses."[43]

The undisputed evidence shows "that he does well academically and that his impairment does not affect his academic performance."[44]

The court stated:

> Under the EHA a child is entitled to the benefit of any related services, including physical therapy, which are necessary to assist the child to benefit from special education...[45]
>
> These provisions clearly indicate that a school is not required to provide all services which might be of benefit to a handicapped child, but only those which are necessary to benefit meaningfully whatever programs the school provides in this case, Billy's therapy is not necessary to enable him to benefit from his education.[46]

The court also rejected the argument that physical therapy is an educational service because it expands the student's occupational horizons, reasoning that "an overly broad definition would force schools to provide any type of therapy which a handicapped child might require."[47]

However, the court directed the school district to develop an Individualized Educational Program (IEP) for specialized physical education instruction.

Order

Student is not eligible for physical therapy but should receive a specialized physical education instruction. Further, an IEP should be developed to reflect the program.[48]

The court's position in following the definition of medical services are that these services will be for diagnostic and evaluation purposes as illustrated in the following cases.

Seals v. Loftis

Issue

Whether the school district is responsible for payment of psychological and neurological evaluations under related services.

Findings of Fact

A student with learning disabilities, visual difficulties and a seizure disorder suffered three Grand Mal seizures during the summer. Prior to this, his school performance had deteriorated. The multidisciplinary team met and recommended to the parent that their child be medically evaluated by a pediatrician. They did not specifically recommend a neurological.The pediatrician referred the child for a neurological evaluation. A psychological evaluation was then recommended by the doctors. The psychological report was used in determining the student's special education needs, however, the IEP did not change. Also, the results of the neurological evaluation did not bring about any changes in the IEP.

The parents requested a Due Process Hearing when the school district refused to pay for the evaluations. The hearing officer concluded that the school district should pay the excess costs for the evaluations not covered by the parent's insurance. The parents appealed that decision. The parents sought reimbursement of the insurance proceeds paid by their insurer to the doctors. They contend that the hearing officer erred in requiring them to use their insurance to pay for the evaluations. While the school district did not question the hearing officer's decision on the insurance decision, they felt he had erred in requiring them to pay for the remaining cost of the evaluation.

Conclusions of Law

The court held that the psychological services and the medical services which were for diagnostic and evaluation purposes were "related services" under the EAHCA.

Further, the court contended:

> It is apparent that these services were requested and required by the Department to assist Travis, in the special words of 20 U.S.C. 1401(17), 'to benefit from special education.' As such, they must be furnished to Travis by the Department pursuant to the EAHCA.[49]

A comment follows which states that "this problem might have been avoided if the IM Team had given the [parents] clearer instruction at the outset."[50]

The court reasoned that:

> Because of EAHCA's emphasis upon a free appropriate public education, this court concludes that parents of a handicapped child cannot be required to utilize their private medical insurance benefits where the utilization of those benefits would cause them to incur a financial cost. See interpretation of 34 C.F.R. 104 and 300 at 45 Fed. Reg. 86,390 (1980). Any other conclusion would be inconsistent with the concept of a free appropriate public education which underlies the EAHCA.[51]

Further, the court held that the insurance payment to the psychologist, "reduced the lifetime benefits available to them under their policy."[52]

Order

Parents are entitled to reimbursement from the school district for the amounts paid directly by them for the evaluation including payment for any reduction in their lifetime insurance benefits.[53]

Woods v. Pittman

Issue

Whether the Local Education Agency (LEA) is responsible for payments to a residential facility for that portion of the bill denominated "medical services."

Finding of Fact

Handicapped children were placed in a private out-of-state facility when the LEA's determined that their local facilities were inadequate to meet the individual educational needs of the students.

The school district refused to pay a portion of the bill for charges classified as "medical services" on the grounds that they were not "for diagnostic and evaluation purposes" and therefore not "related services." An explanatory letter from a representative for the facility to the school district stated that the physicians' services were for "diagnostic, prescriptive and evaluative as opposed to the delivery of direct therapy" and that the registered nurses were responsible for general health needs.[54]

Conclusions of Law

The court held that since the only direct evidence presented:

> Is made largely for the salaries of staff physicians who perform 'diagnostic, prescriptive, and evaluative services,' the court finds that the services for which payment is sought are 'related services' within the meaning of 45 C.F.S. 121a.13...charge attributable to staff nurses in clearly a 'school health service' as defined in 45 C.F.R. 121a.13(b) (10).[55]

Order

The school district is responsible for "medical" and "school health service" charges as they are "related services."[56]

Los Gatos Joint Union High School District v. Doe

Issue

Whether the school district is responsible for the costs of hospitalization of an emotionally disturbed student under the EHA.

Findings of Fact

The high school student was admitted to the hospital suffering from schizophrenia. Her physician recommended placement for her own safety. According to hospital records, treatment for her disorder included a considerable amount of medication therapy. For a portion of her hospitalization she was unable to attend class and later spent only a small amount of time in class due to the therapy required to correct her personality disorder.

Conclusions of Law

Under the EHA the school district is only required to provide medical services for diagnostic and evaluation purposes. Her residential placement and treatment at the hospital involved the rendering of medical services which are not covered under "related services."

The court made it clear in the following case that when a handicapped student requires special transportation as a related service, a school district will be held responsible for damages when this service is denied. When parents have no choice but to transport their child for educational services, reimbursement is not limited to out-of-pocket expenses, but may include compensation for their time and effort.

Hurry v. Jones

Issue

Whether the parents of a physically and mentally handicapped child are entitled to damages and attorney's fees for the failure of the school district to provide transportation to and from school.

Findings of Fact

The student who suffers from spastic quadriplegia and mental retardation is confined to a wheelchair. Prior to January 1976, the school system had provided door-to-door bus transportation for the student to and from school. Bus personnel were lifting him from his front door up and down steps until he began to be too heavy to carry. The parents then began transporting their child themselves. The parents stopped transporting their son in December of 1977 and the student did not return to school until the fall of 1979. During this period of time the school system and parents were unable to resolve the transportation issue. The school district offered home instruction, but the parents rejected it stating that it did not provide the "least restrictive environment." A law suit was filed in December 1978 after two requests for Due Process Hearing were not initiated. In October 1979, an Individualized Educational Program was developed for the student which included transportation to and from school. With the student returning to school, an injunctive relief claim was resolved. However, the parents pursued claims for damages under EAHCA, Section 504 of the Rehabilitation Act, Civil Rights Act and the Fifth and Fourteenth Amendments. The District Court found under the EAHCA and the Rehabilitation Act that the parents were entitled to $5,750.00 for their contributed services and out-of-pocket expense of transporting their child to school. Additionally, the child was awarded $13,796.00 in damages. The school district appealed the awards decision of the District Court.

Conclusions of Law

In addressing damages under the EAHCA the First Circuit Court of Appeals referred to the District Court's conclusion that this case met the requirements expressed in *Anderson*.[58] Whereas, the twofold criteria identified as "exceptional circumstances" for the reimbursement of awards must be met. Under the first criteria, the District Court had concluded that the school district's failure to provide daily physical and occupational therapy had endangered the student's physical health. Second, whereas it took approximately three years for the required service to be provided the school district's "repeated and gross lack of concern must be perceived as a bad faith failure to provide clearly mandated services."[59] The Appellate Court stated:

> We have since adopted a more expansive view of reimbursement under the EAHCA, allowing reimbursement of interim educational and related expenses even when the 'exceptional circumstances' identified in *Anderson* are not present. [In] *Doe v. Anrig* [and] *Doe v. Brookline*, under this approach, it is clear that the District Court correctly found that the [parents] are entitled to reimbursement under the EAHCA for the interim transportation services they provided until the parties agreed on an appropriate Individual Educational Program for [the student].[60]

In analyzing the District Court's award for the parent's contributed services of driving their son to school, the court affirmed the lower court decision and concluded that reimbursement under EAHCA may include compensation for the expenditure of time and effort.

Additionally, the court stated:

> The fact that [the parents] performed the service themselves rather than hiring someone else to perform it should not bar them from recovering the reasonable value of their time and effort.[61]

In reversing the District Court's decision of the monetary award to the student for the time period he was unable to attend school, the court reasoned:

> We think that the result of an 'unjust enrichment' award under the EAHCA is to 'hinder rather than help the very children for whose benefit the statute was enacted.'[62]

Furthermore, the court concluded that the student was not entitled to compensation under Section 504 of the Rehabilitation Act of 1973 for the physical and emotional hardship he suffered during the dispute.[63] The court stated that it was the EAHCA that requires special transportation for handicapped students not the Rehabilitation Act, therefore, the action was properly brought under the EAHCA. Because there was no substantial claim under the Rehabilitation Act, attorney fees were denied.

Order

The school district is responsible for $5,750.00 as reimbursement to the parents of the handicapped child. The award covers both out-of-pocket expenses and compensation for their time and effort transporting their child to and from school. The award to the student under EAHCA and the Rehabilitation Act are reversed.

[1] *Irving Independent School District v. Tatro*, 481 F. Supp. 1224 (W.D. TX.1979), vacated and remanded 625 F. 2d 557 (5th Cir. 1980), 516 F. Supp. 968 (N.D.TX.1981), aff'd. 703 F. 2d 823 (5th Cir. 1983), rev'd in part and aff'd in part, 104 S. Ct. 3371 (1984).

[2] *Tatro v. Texas*, 3 E.H.L.R. at 551:503 (N.D. Tex. 1979).

[3] *Tatro v. Texas*, 3 E.H.L.R. at 552:230 (5th Cir. 1980).

[4] *Id.*

[5] *Tatro v. Texas*, 3 E.H.L.R. at 552:464 (W.D. TX.1981).

[6] *Id.*

[7] *Irving Independent School District v. Tatro*, 3 E.H.L.R. 555:514 (U.S. Sup. Ct. 1984).

[8] *Id.* at 555:515.

[9] *Id.* at 555:516.

[10] *Id.*

[11] *Smith v. Robinson*, 104 S. Ct. 3457 (1984).

[12] *Tokarcik v. Forest Hills School District*, 3 E.H.L.R. at 555:429 (W.D. Pa. 1980).

[13] *Id.* at 552.430.

[14] *Irving Independent School District v. Tatro*, 625 F. 2d 557 (5th cir. 1980).

[15] *Tokarcik v. Forest Hills School District*, 3 E.H.L.R. at 552:430 (W.D. Pa. 1980).

[16] *Id.*

[17] *Tokarcik v. Forest Hills School District*, 3 E.H.L.R. at 552:525 (3rd Cir. 1981).

[18] Ibid. at 552:526.

[19] Ibid.

[20] *Tokarcik v. Forest Hills School District*, 3 E.H.L.R. at 552:528 (3rd Cir. 1981).

[21] *Id.*

[22] *Id.* at 552:529.

[23] *Department of Education v. Katherine D.*, 3 E.H.L.R. 553:5[illegible]3 (DHI 1982).

[24] *Id.*, at 553:533 (DHI 1982).

[25] *Board of Education v. Rowley*, 483 F. Supp. 528 (S.D. N.Y. 1980), aff'd, 632 F. 2d (2d Cir. 1980), rev'd, 102 S. Ct. 3034 (1982).

[26] *Department of Education v. Katherine D.*, 3 E.H.L.R. at 555:278 (CA-9 1984).

[27] *Id.*

[28] *Id.*, at 555:279.

[29] *Id.*, at 555:280.

[30] *Id.*

[31] *Anderson v. Thompson*, 658 F. 2d 1205 (CA-7 1981).

[32] *Department of Education v. Katherine D.*, 3 E.H.L.R. at 555:280 (CA-9 1984).

[33] *Id.*, at 555:281.

[34] *Id.*, at 555:284.

[35] *Id.*, at 555:280

[36] *Detsel v. Board of Education of the Auburn Enlarged City School District*, 4 E.H.L.R. 557:338 (ND NY 1986).

[37] *Id.*, at 555:337.

[38] *Irving Independent School District v. Tatro* (U.S. Sup. Ct. 1984).

[39] *Id.*, at 3376.

[40] *Detsel v. Board of Education of The Auburn Enlarged City School District*, 4 E.H.L.R. 557:339 (ND NY 1986).

[41] *Id.*

[42] *Id.*, at 557:339.

[43] *Maurits v. Board of Education of Harford County*, 3 E.H.L.R. 555:365 (D MD 1983).

[44] *Id.*, at 555:366.

[45] *Id.*

[46] *Id.*

[47] *Id.*, at 555:366-367.

[48] *Id.*, at 555:367.

[49] *Seals v. Loftis*, 3 E.H.L.R. at 557:112 (ED TN 1985).
[50] *Id.*

[51] *Id.*, at 557:113.
[52] *Id.*
[53] *Id.*, at 557:110-113.

[54] *Woods v. Pittman*, E.H.L.R. at 552:443 (N.DMA 1981).
[55] *Id.*, at 552:444.
[56] *Id.*, at 552:442-444.

[57] *Los Gatos Joint Union High School District v. Doe*, 3 E.H.L.R. 556:281 (ND CA 1984).

[58] *Anderson v. Thompson*, 658 F. 2d 1205 (7th Cir. 1981).
[59] *Hurry v. Jones*, 560 F. Supp. 500, 507 (D.R.I. 1983).

[60] *Anderson v. Thompson*, 658 F. 2d 1205 (7th Cir. 1981); *Doe v. Anrig*, 728 F. 2d 30 (1st Cir. 1984); *Doe v. Brookline School Committee*, 722 F. 2d 910 (1st Cir. 1983); and *Hurry v. Jones*, 734 F. 2d 879, at 883 (1st Cir. 1984).
[61] *Id.*, at 884.
[62] *Id.*, at 885.

[63] *Id.*

CHAPTER IV

A REVIEW OF SELECTED STATE LEVEL ADMINISTRATIVE DECISIONS REGARDING RELATED SERVICES

To assure the provisions of a free appropriate public education for handicapped children under the Act, state educational agencies must establish and implement procedural safeguards.

The requirements specified in the Education for the Handicapped Regulations 300.500-300.514 are included in Florida Statutes section 230.23(4)m 4. These provisions for Procedural Safeguards for Exceptional Students are set forth in the Florida State Board of Education Administrative Rules 6A-1.0955 and 6A-6.03311.

Therefore, a due process hearing:

> may be initiated by a parent or a school district on the proposal or refusal to initiate or change the identification, evaluation, or educational assignment of the student or the provision of a free appropriate public education to the student.[1]

If a due process hearing is initiated, both parents and the school district have the right to a fair and impartial hearing conducted by a hearing officer from the Florida Division of Administrative Hearings. The results of the hearing must be mailed to both parties within forty-five days of the request for the hearing.

Additionally, any party has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of exceptional students;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing;
4. Obtain written or electronic verbatim records of the hearing; and
5. Obtain written findings of fact and decisions.[2]

Furthermore, parents have the right to receive from the school district any information about free or low-cost legal assistance or other appropriate services that are available. They may also have their child present and the hearing open to the public if they choose.

The decision of the hearing officer is final unless the decision is appealed by either party.

Thus, this administrative remedy was utilized in the following selected State Educational Agency related services decisions.

Medical, School Health, and Supportive Services

The first two due process hearings presented are significant because the decisions were based on whether the cognitive abilities of nearly comatose or semicomatose severely handicapped children could benefit from special education.

In re: Contra Costa County
Consortium/San Ramon Valley
Unified School District

Issue

Whether a child who is nearly comatose is eligible for special education?

Findings of Fact

As a result of a near drowning during infancy, a seven-year-old boy suffers from anoxia and is profoundly handicapped. He is unable to speak, move his arms and legs volitionally and has severe cognitive and motor delays.

The school district contends that the child is in a comatose state and requires around the clock medical attention. They further contend that because of his severe limitations he is unable to develop a communication system. Therefore, due to these reasons, he is not eligible for special education services because he cannot benefit from such services.

However, it is the parents' contention that their child is not comatose, and if given training he will learn to communicate by moving his head to manipulate an electric switch. The parents state that he is able to visually track movement of persons, to distinguish voices, to respond to sound by turning his head in that direction, and to react to his mother's presence by an increase in breathing rate and muscle tone.

Conclusions of Law

The hearing officer concluded with the evidence presented that the child was capable of cognitive responsiveness. He did acknowledge that it was "highly speculative" that the child could learn to use the communication device with the "degree of consistency" necessary for meaningful communication.[3]

Ruling that the child was handicapped under the Act, the hearing officer stated: "...that evidence is persuasive that [the child] can benefit from a special education program specifically designed to meet his unique needs.[4] Furthermore:

the notion that the EHA intended to open the door to special education and not to limit its availability is again found at 20 United States Code S 1414(a) (1) (A). The Act is shown to require special education services for children regardless of the severity of their handicap.[5]

Order

An Individualized Education Program will be developed to address the goals and objectives which are consistent with the decision.

Thus, the hearing officer thought that based on the evidence presented, the child was capable of some level of cognitive functioning. Hence, the child could learn some minimal communication system and benefit from a special education program.

In a similar Illinois case, a review panel concluded that a semicomatose child was not eligible for special education services.

Although the panel did not enunciate a threshold standard, they stated the child did not possess sufficient cognitive abilities to benefit from special education.

Case No. SE 53-81

Issue

Whether a child who is either in a semicomatose or comatose state is entitled to special education services.

Findings of Fact

The child is a six-year-old boy who suffers with severe brain damage as a result of a near drowning in 1980. When admitted to the hospital he was not breathing and has been in either a comatose or semicomatose state since.

In 1981, on appeal of a Due Process Hearing, it was held that the child was not eligible for special education and related services. However, during the 1983-84 school year, to further evaluate the child, the school system provided the child with homebound services. He was provided with physical therapy, occupational therapy, and sensory stimulation. The results of the evaluation indicated that due to the child's condition, he could not benefit from educational services. Upon the district's proposal to terminate services, the parents requested a Due Process Hearing. The hearing officer held that the child was eligible for special education and related services. The district then sought an appeal to have the officer's decision reversed.

Conclusions of Law

Finding that because of the child's chronic unresponsive condition, the boy could not benefit from educational services, the state level review panel reversed the hearing officer's decision. The review panel held:

> Although the child is undoubtedly in need of services, they are not educational in nature. It is not the district's responsibility to provide physical therapy or other related services to a child having no special education needs. This is clear from a comment to the federal regulations.[6]

Considering the "zero-rejection" concept that everyone has a right to a free appropriate education, the review panel stated:

Without expressly enunciating a threshold standard we hold that the district is not required to educate this child who does not have sufficient cognitive powers to profit from education.[7]

Order

Whereas the child is not eligible for special education services, the hearing officer's decision is reversed. The school district is also not responsible for further evaluation.

In the foregoing cases, it is not clear what the cognitive level of responsiveness of a child should be before they can benefit from special education services.

However, in a New York State case the Commissioner of Education found that while a multi-handicapped child was entitled to some related services, the school district was not required to provide the complex therapeutic services needed. Therefore, homebound instruction was ordered. Judicial review of this decision in *Detsel v. Ambach* held that extensive health services may be considered more medical and thus excluded by EHA.[8]

In re: City of Auburn
School District

Issue

Whether the school district is responsible for providing skilled nursing care to meet the medical needs of a multi-handicapped child.

Findings of Fact

This is an appeal by the board of education of a hearing officer's decision ordering the district to provide a trained person to care for the medical needs of a severely handicapped student while attending a special education program.

The six-year-old child's medical condition includes problems with:

> pulmonary hypertension, borderline congestive heart failure, pulmonary fibrosis with ventilator dependence, scoliosis, club feet, a gastroesophageal reflex and chronic under-nutrition.[9]

Due to her complex problems, she requires ventilator assistance for breathing and also feeding and medication through a gastrostomy. The Department of Social Services provided her with a licensed practical nurse to perform necessary services during the day and at night.

The Committee on the Handicapped (COH) met in July 1983, and classified the child as other health impaired. The committee recommended that the student receive speech/language, physical therapy, adaptive physical education, and occupational therapy monitoring. Although school health services were stated, the COH did not specify what services in fact the district would be responsible for.

Upon entering kindergarten in September for two hours a day, the Department of Social Services withdrew the funding for the nurse during school hours. The agency contended that to continue the service during the school day would be in conflict with the medicaid regulations. However, the school district funded the position of the nurse for the 1983-84 school year. Maintaining that this was not their responsibility, the availability of other funding sources was sought.

At the annual IEP review in May of 1984, the student's classification was changed to multiply handicapped. The previous related services that were needed were continued. However, it was noted that her health needs could not be performed by the school nurse and the financial responsibility for health services was still unresolved.

Prior to the new school year the parents were informed that the school district would not fund the services of a nurse for their child. Therefore, the parents requested a due process hearing to resolve the dispute. The parties agreed that without special trained assistance the child would be unable to attend school, but also the services would be needed if she was at home. Testimony at the hearing revealed that if the child were to experience respiratory distress and immediate intervention by a trained health professional was not available, the child could suffer fatal consequences.

In referring to the *Tatro*[10] decision, the hearing officer reasoned that the "supportive services" were "inextricably related to her opportunity to receive an education in the least restrictive environment."[11] Thus, to assure the student a free appropriate public education under the Act, the district was responsible for the services.

On appeal, the Commissioner of Education stated:

> ...it is readily apparent that in limiting medical services to those needed for diagnosis or evaluation, Congress did not evidence an intent that school districts assume general responsibility for

> the medical treatment or rehabilitation of students with handicapping conditions.... It does not follow, however, that any or all skilled nursing care or medical procedures must be provided by a board of education, subject only to the limitation that such care or procedures may be provided by someone other than a licensed physician.[12]

Furthermore, the Commissioner rationalized that while some of the services could be performed by a trained lay person, the requested services were more extensive than in *Tokarcik*[13] or *Katherine D.*[14] Additionally, the administration of medication by a lay person through a jejunal tube would be prohibited under New York State law.

Therefore, in reversing the hearing officer's decision, the commissioner held that:

> the level, skill and frequency of the therapeutic services needed by respondent's daughter are well in excess to the services typically associated with school medical services provided by the public schools of this state. Therefore, I am unable to conclude that those services may be accurately described as school health services to be provided by petitioner as related services, in accordance with the definition set forth in [the federal regulations].[15]

Order

Hearing officer's decision is annulled and the child is to be provided home instruction by the school district. The school district's responsibility for students with complex medical problems was further defined in the following two due process cases.

In the first case, on appeal, the Illinois Superintendent held that the range of school health services "hinges upon the qualifications of the provider and not necessarily upon the nature of the specific service."[16] While a district may have its own employment standards for individuals performing school health services, they must be consistent with the EHA and not utilized to bar program participation.

A Massachusetts hearing officer found in the second case that the physical limitations of a child did not prevent her from receiving educational services but rather provided direction for the development of her educational goals. Furthermore, the testimony of the child's physician that the child was susceptible to respiratory infections led the hearing officer to decide that educational services should be provided through the homebound program. Requested nutritional therapy and home-health aide services were not found to be within the scope of related services.

Case No. S.E.-27-84

Issue

Whether the school district is responsible for services which are considered essential to the student's health and safety which include ventilator dependency, suctioning, catheterization and a temperature controlled environment.

Findings of Fact

This is a state administrative appeal by the school district of a hearing officer's decision. The parents of the handicapped child ask that the hearing officer's order be affirmed and enforced.

A severely physically handicapped boy, who at the age of seven in 1976 had a brain tumor removed. Ten months later, after surgical removal of a calcified hematoma, it was discovered that his spinal cord was damaged. The injury left him paralyzed from the neck down with no voluntary control of his respiratory system, bladder, or bowels. He was then placed on a ventilator in a temperature-controlled environment. His bladder and bowels are controlled by catheterization and medication. The boy has remained in a chronic respiratory ward portion of the hospital until present. As a matter of record, it was noted that the boy has not been discharged because of psychological and cognitive reasons. In the winter of 1983, his health improved and he began to respond to others despite his atypical environment. Thus, in May of 1983, educational services were requested of the school district on behalf of the boy. Any instruction prior to this time was given by the hospital staff. The district completed an evaluation of the boy's needs and concluded that along with his physical impairment he was intellectually functioning in an Educably Mentally Handicapped range. During the summer the hospital staff was informed that the school district's attorneys were reviewing its responsibilities due to the complexity of the services required for the boy.

After a placement staffing was held in December, itinerant home/hospital services commenced. Thereafter, the boy's physicians asserted that he should be able to receive educational services in the public school setting. Under district policy the school system stated that their attorneys were determining if the services needed were supportive or medical and what qualifications the person performing the service would need. A Due Process Hearing was then held to resolve the dispute.

The hearing officer concluded that the least restrictive environment for the boy was placement in a physically impaired educably mentally handicapped class in the public schools. He ordered the district to provide catheterization, suctioning, ventilator monitoring and temperature control supportive services by a qualified individual.

Conclusions of Law

Referring to the Federal regulations on the definitions of medical and school health related services, the State Superintendent stated:

> In clarifying medical services, the regulations provide initially that they need be provided only for diagnostic and evaluative purposes. No such stricture attaches to school health services. Instead, the range of services hinges upon the qualifications of the provider and not necessarily upon the nature of the specific service, and school health services become defined as those services which a qualified school nurse or other qualified person can reasonably be expected to provide to facilitate a handicapped child's participation in the educational process.[17]

Noting the opinions in *Tatro*[18] and *Katherine D.*[19]

the superintendent concluded:

> Whether the district has to provide a particular service to a particular child as a related service does not depend upon how specialized the service may be or even whether it is a service which the required services personnel described in the statute and its regulations can reasonably be expected to provide. If it is such a service it must be provided so as to facilitate the handicapped child's participation in the educational process in a manner consistent with the other requirements of the Education for All Handicapped Children Act.[20]

Furthermore, the district may set its own qualification standards for employing individuals to perform the services. However, these standards "may not be inconsistent with the statute, or be used to deny, bar, or limit a handicapped child's opportunity to participate in the district's program."[21]

Order

The decision of the hearing officer is upheld. An Individualized Education Program is to be developed to provide placement in the school district's program for Physically Impaired Educably Mentally Handicapped children. Additionally, the IEP shall state the specific related services to be provided and an individual to perform the services. Written notification of compliance shall also be sent to the State Board of Education.

In re: Stoneham
Public Schools

Issue

Whether the school district is responsible for services in a hospital or home program setting for a severely handicapped child who has complex medical problems.

Findings of Fact

The child is a thirteen-year-old, profound mentally retarded child with severe medical problems and functions developmentally at a three-to-four-month-old level. She has been cared for by her family in the home her entire life and attended a rehabilitation facility intermittently for approximately one school year. The parents contend that she should receive an educational program in the home setting because of susceptibility to life threatening respiratory infections. The school district recommended that she be placed in a hospital program at a rehabilitation facility. They further contend that because her problems are mostly of a medical nature, that this placement is the responsibility of the Department of Public Health. The services that the child is in need of include physical, occupational, nutritional,and speech therapy and additionally, the services of a home-related aide. The child's physician testified that because of the child's vulnerability to respiratory infections which are life threatening, that she must receive an educational program in her home.

Conclusions of Law

The hearing officer concluded that the child is considered handicapped under P.L. 94-142 and is therefore eligible for services under the Act. Her "limitations do not preclude her from education, but rather, determine the goals to which educational services are directed."[22] The educational program should be delivered in the home, based on the testimony of the child's physician. Furthermore, the school district is responsible for the occupational, physical, and speech therapy which are related services under the Act. As nutritional therapy and home-health aide services are not considered related services, they are not the responsibility of the school district.

Order

The school district is responsible for providing the related services of direct physical, occupational, and speech therapy in the home setting for the handicapped child.

School districts are often requested to be responsible for psychiatric treatment and services. However, as the following two cases illustrate, medical services, except for diagnostic and evaluation, are excluded under the EHA as related services.

In re: Kern Union High
School District

Issue

Whether the school district is financially responsible for a student's psychiatric treatment in a residential facility.

Findings of Fact

A seriously emotionally disturbed fifteen-year-old boy who has a history of mental and emotional problems since early childhood was placed in a private psychiatric facility by his family. He has been receiving special education services by the school district since second grade and is still eligible for services. At eleven years of age he was placed on anti-psychotic medication and has been provided outpatient treatment.

After being bitten by a dog in April of 1985, his condition deteriorated. He physically attacked his special education teacher causing her to receive medical treatment. Due to their son's behavior the parents then removed their son from school. Shortly thereafter, the boy was hospitalized. During his stay a psychiatrist found him to be having auditory and visual hallucinations and diagnosed him as having schizophrenia. While in this setting, it was noted that he also assaulted the staff and long-term placement was recommended. He was then placed by the parents in a private psychiatric facility for long-term residential treatment. The staff noted that the "incident of being attacked by a dog exacerbated the pathology resulting in an acute psychotic break."[23]

Prior to this placement, the parents requested the school district to fund the residential placement. They contended that the services were educational rather than for medical treatment. The school district held that the placement was for psychiatric treatment which is a medical service and therefore, they were not financially responsible under the Act. However, the district did pursue investigating alternative placements for the boy, such as the state hospital. The parents requested a Due Process Hearing to settle the dispute.

Conclusions of Law

In referring to the P.L. 94-142 regulations, the hearing officer stated that medical services were limited to diagnostic or evaluation purposes only. Discussing the district's obligation to provide services beyond this, the hearing officer referenced the *Tatro*[24] decision and concluded:

> The court reached its findings by focusing its analysis on the nature of the services being provided. It concluded that if a service required a licensed physician, then that service is excluded as a related service under the Education of the

> Handicapped Act, except as stated, for diagnostic and evaluation purposes.[25]

Therefore, because the placement was for medical services and did not occur as part of the student's Individualized Education Program, the district is not responsible for the cost of placement.

Additionally, the hearing officer held that due to the boy's chronic state that he is presently unable to benefit from a special education program. Thus, the school district is not responsible for his educational services at the psychiatric facility.

Order

Parent's request for reimbursement is denied.

In re: Palos Verdes Peninsula Unified School District

Issue

Whether the school district is responsible under related services to have a psychiatrist monitor a student's anti-psychotic medication.

Findings of Fact

A nine-year-old seriously emotionally disturbed child was recommended for program placement at a special school when the IEP committee in October 1984 determined his existing program was inappropriate. He was attending a special education class at a regular elementary school. The class served ten students with various handicapping conditions and was staffed by a teacher and two aides. One of the aides was specifically hired in September 1984 to assist the boy with his inappropriate acting out behavior. While in attendance at this school during the summer of 1984, the parents found it necessary to admit their son to a psychiatric facility. This action was initiated because the boy had become hostile, physically attacking his sister and setting a fire in back of the family home. During his hospital stay, the child received psychotherapy and medication to control his inappropriate behavior. He was discharged in September with a recommendation to continue medication and the special day class. Returning to the former placement, his inappropriate behavior escalated even with the assistance of the additional aide. However, it was noted that no behavior management techniques were employed. In October, when the parents disagreed with the district's proposed placement, the parents began seeking another placement for their son. They kept their son out of school from November to January 2, 1985. In December, at an IEP meeting, counseling services were increased for the student, along with once-a-week parent counseling sessions. At this meeting the parents requested that their son be placed in a public special education program which included after school day treatment services. The afternoon program included psychotherapy and therapeutic recreational activities.

The district denied the parents' request and again recommended placement at a special education school which has classrooms for seriously emotionally disturbed students. The program offers a highly structured behavior management system with a teacher and an aide for six to eight students, plus support services from behavior aides and a full-time school psychologist.

In January, at another IEP meeting, new goals and objectives were developed for the student. The parents, along with the rest of the committee members agreed that the objectives were appropriate. The student showed a marked improvement in his behavior since his return to school in January.

However, the parents requested a Due Process Hearing, contending that their son needed the day treatment program, medication monitoring by a psychiatrist, services of a social worker to act as a liaison between the family and agencies, and scheduling of parent counseling sessions after the parents' work hours. The district contended that the proposed placement was an appropriate program for the student.

Conclusions of Law

The hearing officer concluded that the school district's proposed placement of the student was appropriate. Based on the evidence presented, the student's behavior was not so severe that an after school day treatment program was warranted. Additionally, the services of a social worker are not required for the student to benefit from special education. So that the student may benefit from his education, counseling for the parents will be held weekly for one hour after the parents' work day.

In reference to the services of the psychiatrist, the hearing officer held that the monitoring of medication by a staff psychiatrist was not required for the student to benefit from special education. Concluding that the monitoring would not "comply with the limited type of medical services which may be provided handicapped children."[26]

Order

The IEP shall be amended to include evening parent counseling sessions, and placement should occur in the school district's recommended program.

Physical Therapy Services

Due Process Hearings regarding physical therapy services center on issues involving eligibility, direct services, consultative services, physical therapists' qualifications, and summer services.

When a child had made excellent progress from private direct physical therapy, a school district was ordered by a California hearing officer to provide direct physical therapy instead of consultation services.

In re: Vallejo City Unified
School District

Issue

Whether a severely handicapped student should receive consultative or direct physical therapy.

Findings of Fact

The profoundly handicapped child is a nonambulatory, non-verbal four and one-half year old who suffers from chronic seizures, spasms, and cerebral palsy. She has attended various programs since infancy and most recently received services through an infant stimulation program until enrolling in the school system district program. The school district recommended program placement in a class for the severely handicapped with a teacher and aides. After consulting with the California Children's Services (CCS), the Individual Education Program team recommended that the child receive consultative physical therapy services instead of direct individual physical therapy. One of the criteria that the CCS staff based their recommendation on for direct therapy is that a child would receive identifiable benefits from that service.

After the district refused individual physical therapy, the parents withdrew their child and placed her in a day care center and obtained private physical therapy for her. The parents then requested a Due Process Hearing to resolve the matter.

It was noted that during the period that she received private physical therapy she made outstanding progress, therefore, displaying her ability to benefit from direct physical therapy.

Conclusions of Law

Finding that the consultation services provided by the district were inappropriate, the hearing officer concluded that the child be given direct physical therapy.

Rationalizing that the District:

> prognosis has proven to be incorrect and while it is not possible to say with absolute certainty that physical therapy was the only cause of this progress, the correlation is too strong to be ignored.[27]

Order

District is to amend IEP and provide hands-on physical therapy for one hour twice a week.

In another California case, direct occupational and physical therapy services were denied. Referencing *Rowley*[28] the hearing officer concluded that there was no requirement within a free appropriate education to maximize a student's potential.

In re: Fullerton Elementary
School District/California
Children's Service

Issue

A three and one-half year old handicapped child with Down's syndrome has a condition known as hypotonia which is a decrease in muscle tone. Hence, he has a developmental delay in acquiring motor skills. Presently, he attends a special class within the school district. As part of his program he receives adaptive physical education and speech therapy. The composition of his class includes a teacher and an aide with eight students.

Since infancy he has received physical, occupational, and speech therapy. The family has privately obtained Physical Therapy and Occupational Therapy services since his public school enrollment. His gross motor level functioning is between 16-24 months. Thus, he is clumsy, tends to fall, is not able to run, jump, or skip and has some difficulty walking. His fine motor development is between 12-13 months. Therefore, he has problems in activities that require fine motor skills such as stacking blocks and stringing beads.

An Individual Education Program (IEP) was developed which addresses specific annual instructional objectives for both fine and gross motor skills. The classroom teacher, adaptive physical education teacher, and parent are listed on the IEP as being responsible for these goals.

The school district offered consultative physical therapy and occupational therapy services to assist the staff in activities which would help the student develop his motor skills. However, the parents contended that their child needed direct physical and occupational therapy. Based on the district's refusal to provide the service, the parents requested a Due Process Hearing. Additionally, they requested reimbursement for the private therapy they obtained for their child.

Conclusions of Law

In referring to *Rowley*[29] in what constitutes an "appropriate" level of services, the hearing officer stated:

> The statute defining a free appropriate public education contains no requirement that states maximize the potential of handicapped children commensurate with the opportunity provided to other children.[30]

Therefore,

> While direct services would enable [the student] to maximize his potential, such service level is beyond what is required. Further, direct services are more restrictive than consultative services.[31]

Thus, the hearing officer denied the parents' request for direct occupational and physical therapy. There was also no basis for reimbursement of the services the parents privately obtained.

Order

An IEP meeting shall convene to include consultative occupational therapy/physical therapy services for an hour each per week.

The position that public schools are not legally required to maximize the physical potential of a student was also concluded by the Pennsylvania Secretary of Education in *Thomas B. v. Randnor Township School District*.[32] Additionally, there is no legal basis for providing physical therapy as a preventative pediatric. In this case, the student was not in a special education program and therefore was not eligible for physical therapy as it was not required for him to benefit from his regular educational program.

Thomas B. v Randor Township School District

Issue

Whether a child who has a physical impairment and attends a regular kindergarten class with adapted physical education is entitled to receive physical therapy as a related service.

Findings of Fact

In April of 1979, an Individualized Educational Program (IEP) was held to develop a program for a five-year-old cerebral palsied child for the 1979-80 school year. It was agreed upon that the child would be placed in a regular kindergarten classroom with an adapted physical education program. The parents requested physical therapy for their child, but the school district stated that the student was not entitled to receive it as a special education "related service.'

At the parent's request, a Due Process Hearing was held and the hearing officer ruled that the child was physically handicapped and was in need of adapted physical education and physical therapy. The district then filed exceptions to the decision to the Secretary of Education.

Conclusions of Law

The secretary concluded that based on the evidence that the physically impaired student did not meet the federal definition of "handicapped" nor did he meet the state definition of "exceptional" because he is "an example of a successfully mainstreamed child."[33] In referring to the federal definition of "Special Education," the secretary stated that the specially designed program is required so the student may attempt to move toward their IEP goals, which is not the regular education course. Furthermore, "special education is meant to address the handicapped student who is truly floundering in a regular education because of the significant interference of his handicap with the learning process."[34]

It was also found that the "adapted physical education" that the student was receiving was not considered special education. Reasoning that the program was "indistinguishable from the regular physical education program being provided to the average student except in the quantum of activities open to the students."[35] The physical education teacher testified that the student functions well in class and has no need for specialized equipment or methods. Therefore, the secretary concluded that the student is able to participate in the program "with minimal adjustments related to his impairment."[36]

In regards to the issue of physical therapy, the secretary held that the student is not entitled to physical therapy as a related service because the student's physical education program is not considered special education. Therefore, physical therapy is not needed to assist him in benefiting from his educational program including physical education.

Rejecting the hearing officer's recommendation for physical therapy, the Secretary of Education stated that his conclusions were:

> based on an assumption, erroneous under State and Federal law, that the legal duty of the public schools is to maximize the physical potential of the physically impaired.[37]

Furthermore,

> While [the student] may require physical therapy to maximize his physical potential or as a means of achieving preventative pediatrics, we cannot legally require a school district to provide physical therapy under either of these standards.[38]

As a follow-up, the district was ordered to obtain information in regards to the child's yearly health condition to determine if there are any physical activities he should not be involved in. A physical therapist is also to be consulted at least twice yearly to determine any changes in his motor capabilities so his physical education may be adjusted if necessary.

Order

The hearing officer's recommendations are rejected and the consultants will be contacted as ordered.

Unlike the former case decision, a Massachusetts hearing officer ordered that the school district provide physical therapy to a preschool child. The rationale was that with early prevention and intervention services, the child may be able to function in regular activities in his coming school years.

In re: Willmington
Public Schools

Issue

Whether the school district is responsible for providing physical therapy to a preschool child with orthopedic problems.

Findings of Fact

The four-year-old child was diagnosed as having spastic diplegia with a tendency to walk up on his toes and with a waddling gait.[39] The school district contends that the child is functioning in the above average range for his age and has already acquired many of the readiness skills required for kindergarten. Based on these team findings, the school district held that the child could not be considered a special child because his disability would not affect his ability to progress effectively in kindergarten and thus he was not eligible for physical therapy as a related service. The parents' witnesses testified that the child's physical disability would in fact affect his ability to progress effectively in a regular school program without early intervention physical therapy assistance.

Conclusions of Law

The hearing officer concluded that based on the evidence presented, the preschool child was a child who did have special needs. That without intervention he may have progressive physical difficulty with the attached stigma upon entering kindergarten. Thus, the child's physical and muscle development must receive immediate attention "to enable him to participate in normal curricular activities in the future."

Order

The school district is ordered to reimburse the parents for private physical therapy retroactive to January 1982. Furthermore, the school district must provide physical therapy sessions until he starts kindergarten in the fall.

On appeal, a review panel found in the following case that summer physical therapy was needed for a handicapped child with scoliosis to prevent the student's regression and allow her to educationally benefit from her program in the future.

Case No. SE-28-84

Issue

Whether the school district is required to provide a student with physical therapy during the summer.

Findings of Facts

This is an appeal brought by the school district in regards to a hearing officer's order to provide physical therapy in the summer for a student. The student is a nonambulatory, nonverbal fourteen-year-old multiply handicapped girl. She functions within an educable range and suffers from severe cerebral palsy and scoliosis. Presently she is placed in a program for the multiply handicapped and receives physical, occupational, and speech and language therapy.

In June of 1984 a Due Process Hearing was held at the parents' request when the district refused to provide summer services for the student. The hearing officer ruled that there was not sufficient evidence to show the student would in fact regress during the summer months without service.However, the hearing officer ordered the district to administer the Brigance Diagnostic Inventory of Basic Skills during the 1984-85 school year so her rate of progress could be measured and reviewed in the spring of 1985. A state level appeal panel upheld the hearing officer's decision in August of 1984.

At the student's annual review in May of 1985, the test results were reviewed and it was determined that the student did not have a regression problem. Additionally, the district contended that the physical therapy services were medical rather than educational. However, the parents still requested services for the summer of 1985, and the district denied the request. The parents then sought a Due Process Hearing to settle the dispute of summer services, including physical therapy.

At the hearing a letter was presented from the student's orthopedic surgeon recommending year-round physical therapy. Testimony was also presented from an occupational therapist who had worked independently with the student. The therapist noted "that within the last six months the student has rapidly developed scoliosis, which will require regular physical therapy to retard its deteriorating effects."[40] The therapist also stated that without stabilizing her body position she would be unable to sit in a chair for academic learning to occur.

The physical therapist serving the school district, who worked with the student during the school year, agreed that the student needed physical therapy in the summer. The therapist testified that "these conditions were medical problems, but added that they would spill over into educational programming if the student did not receive the necessary therapy."[41]

The hearing officer found that a summer instructional program was not needed for the student, but physical therapy was an appropriate service throughout the calendar year. The reasoning being that with therapy it will be an "attempt to retard the effects of the scoliosis on her ability to learn."[42] Furthermore, the hearing officer recommended that the student's program be reviewed to determine the need for additional services.

On appeal, the district refuted its obligation to provide the necessary summer therapy. The district contended:

> Education is not charged to provide preventative/therapeutic services outside the context of the educational program. Clearly to rule that a district is required to provide services to attempt to retard a deteriorating medical condition (scoliosis) would be beyond the scope of the law. The precedent setting decision could obligate many districts to provide basic medical services including, but not limited to such activities as surgery, medication outside school, and psychiatric services.[43]

Conclusions of Law

The review panel disagreed with the school district's rationale that the services were medical rather than educational. In upholding the hearing officer's decision, the panel stated:

> The question of whether a district must provide a handicapped child with special education during the summer depends upon the effect of the interruption in services upon the child's educational progress. The courts have held that school districts have an obligation to offer special education during the summer to those handicapped students whose regression during the summer and inability to recoup the last learning once school

> resumes is so severe as to bring the child's overall educational progress to a virtual standstill, and to deprive the child of any educational benefit from his program. [Referring to] *Battle v. Commonwealth of Pennsylvania* [and] *Crawford v. Pittman*. Although this standard is a rigorous one, we believe the student in this case meets it, and is therefore eligible for summer services.[44]

In conclusion, the review panel said, based on the student's need, continued physical therapy is both an educational and medical need and the lack of this service over the summer would cause regression and "prevent the student from receiving the required educational benefit from her program."[45]

Order

The hearing officer's decision is affirmed and the order implemented. A written notice of compliance must also be submitted. Issues involving who should perform the therapy services were decided in the following cases.

In the first case an Illinois State level appeal panel reversed a hearing officer's decision and ordered the district to continue with the same therapist. They held that the school district could not accept a physician's evaluation and prescription and then ignore the therapist he recommends. Further, the district must evaluate the student to determine if a change in therapist would be harmful to the child.

The second case decision addresses techniques recommended for a student by neuro-developmental therapists. The hearing officer found that the qualifications of both the school's physical and occupational therapist were appropriate for fulfilling the child's IEP goals.

Case No. SE 48-84

Issue

Whether a school district is able to change the physical therapist provider when it does not conduct its own evaluation to determine the needs of the child.

Findings of Fact

This is a state level appeal of a hearing officer's decision for the school district to implement a change in who was going to provide physical therapy services to a four-and-one-half-year-old physically impaired child. The parents contend that their daughter, who suffers from spina bifida, could be harmfully affected by changing the therapist. Before her first birthday she began receiving therapy at home and later at the facility of the provider. The treatment was of benefit to her. Due to a staff reduction, the private provider found it necessary to change physical therapists. Before the child's third birthday the parents noted that their child had some difficulties working with the new therapist. Hence, the family changed the physical therapist with their physician concurring. When the child became three the school district evaluated her and found her eligible for early childhood and physical therapy services. A primary factor in the parents concurring with the placement recommendation was that the child's present physical therapist was also being contracted by the school system at that time. At an Individualized Educational Program Annual Review in May a year later, the same service recommendations were made.

During the summer through the school district's bidding procedure, a different provider for physical therapy services was selected. The therapist was the same one in which the parents had previously chosen not to serve their child. The parents rejected the proposed change stating that she would regress, and discontinuing the long-term relationship would be harmful in her progression. Lastly, they argued that their physician had written two letters opposing the change. The school district contended that they could contract with any provider for the services as long as they were licensed and followed the physician's prescription. The prescription provides direction for the frequency, duration, and nature of the therapy to be received.

Conclusions of Law

The state level review panel reversed the hearing officer's decision. They concluded the district could not demonstrate that if the therapist was changed it would not be harmful to the child. They did acknowledge the school district was free to contract with any licensed physical therapist they chose but stated that was not the real issue before them.

Whereas, the district did not conduct any medical evaluations of its own, the only evaluations available to determine the child's needs were the ones obtained privately by the parents, including the physician's letters. In referring to the independent evaluation, the court stated:

> When it is the only evaluation available its findings and recommendations must be given substantial, generally determinative weight in formulating placement and accepts the physician's evaluation, which it has in this case, and accepts his prescription, which it has in this case, and yet chooses not to accept the therapist he recommends, it is incumbent upon the district to present at a minimum...a report verifying that the proposed change will not result in harm to the child.[46]

Order

The hearing officer's decision is reversed and the district shall incur the costs of continuing with the same therapist. A change of therapist can only occur after the specified time and when the district has properly evaluated the child to determine that a change would not be harmful to the child

In re: Framingham Public Schools

Issue

Whether occupational and physical therapists need additional certification in neuro-developmental treatment to provide an appropriate student program.

Findings of Fact

A three-year-old cerebral palsied student had been receiving physical therapy services since infancy and occupational therapy services since eighteen months of age. Upon obtaining the age of three the school district assumed the educational responsibility and developed an Individualized Educational Program (IEP). However, the parents objected to the IEP, contending that the qualification of the occupational and physical therapists were not sufficient to meet their child's educational needs.

A registered physical therapist with certification in neuro-developmental treatment testified that all cerebral palsy patients need neuro-developmental therapy because of its emphasis on the total body. Whereas, standard therapy techniques tend to focus on specific muscles. The school's physical and occupational therapists gave specific examples of how they also employed techniques using the entire body to achieve relaxation.

Conclusions of Law

The hearing officer held that the techniques recommended by the neuro-developmental therapist were also utilized by the school's physical and occupational therapists. Additionally, under the American Association of Occupational Therapists and the State Board of Registration, the standard therapists are certified to treat cerebral palsied children. Therefore, the "evidence is unpersuasive that standard therapists are inappropriate for all cerebral palsied children."[47]

Order

The IEP should be notified to include goals and objectives recommended by the neuro-developmental therapists and the school district is not required to provide neuro-developmental therapy.

Occupational Therapy Services

The definition of occupational therapy under P.L. 94-142 regulations included "preventing, through early intervention, initial or further impairment or loss of function."[48] Based on the evidence presented, the need for occupational therapy intervention was determined in the following two cases.

In the first case a Massachusetts hearing officer found that direct occupational therapy services were needed so the student could maximumly benefit from her educational program. It is important to note that the school district had not performed their own evaluation for occupational therapy. Therefore, a school system can not reject a recommendation for services unless it has conducted its own professional evaluation to base its decision on.

In a similar California case, a hearing officer concluded that occupational therapy intervention was more effective at a younger age. Furthermore, that if the student was given therapy, his motor skills would not only develop but his behavior would also improve.

In re: Lisa D

Issue

Whether direct services from a licensed occupational therapist are required for a student to maximumly benefit from other educational services.

Findings of Fact

The student who has difficulty with expressive language, visual-motor integration and fine and gross motor skills was placed in a kindergarten-transitional class after an Individualized Educational Program (IEP) was developed. A psycho-educational evaluation had been administered with a recommendation that her occupational therapy needs also be assessed. This assessment revealed that she should receive direct occupational therapy services, activities for gross motor development, occupational therapy consultations and classroom modifications.

A meeting was then held where the IEP was developed to include the kindergarten-transitional class with speech and language therapy and a specialized gross motor program. The school district contended that fine motor deficits are addressed within the kindergarten-transitional classroom, therefore, occupational therapy services were not needed.

The parent rejected the exclusion of occupational therapy services in the IEP. The school district then amended the IEP to include the services of a learning disabilities specialist to assist the student with handwriting skills. The parent rejected the amendment and continued to request occupational therapy services. The parent then sought a private occupational therapy re-evaluation. The results of the evaluation were consistent with the prior evaluation, indicating that occupational therapy services were needed. Based upon this information, the parents then initiated a hearing. The occupational therapist testified at the hearing that direct occupational therapy services were essential to foster the student's development of basic muscular maturational skills and these skills were crucial to her future academic growth.[49]

Conclusions of Law

The hearing officer noted that the only evaluations available for consideration by the staffing team were the ones that the parents had privately obtained. Due to this, the school system had no professional expertise on which to base their rejection of the recommendation for direct occupational therapy. The school system argued that their own motor therapist and elementary teacher were trained to provide the services required for the student. However, the hearing officer rejected this argument and concluded that the student should receive:

> ...individual, occupational therapy from a registered occupational therapist, as well as two periods per week of structured small group gross motor activities, in order to benefit to the maximum extent feasible from the other educational services offered and so make progress commensurate with her potential.[50]

Order

The IEP must be modified to include direct individual occupational therapy from a registered occupational therapist. Therefore, this decision holds that when a student's individual needs require occupational therapy services, a substitute program by other support staff cannot take its place.

In re: Orange Unified School District

Issue

Whether occupational therapy is required for the student to benefit from his instructional program.

Findings of Fact

The eight-year-old student with poor handwriting skills has a neurological impairment but functions at or above average in reading, mathematics, and language skills in a regular second grade. Information obtained from assessments revealed that the student had a deficiency in gross motor skills. Additionally, his handwriting was found to be seriously deficient for his chronological age. He was therefore found eligible for special education services and placed in an Adaptive Physical Education program for once a week to address this area. Due to the student's improvement in achieving the goals, the Adaptive Physical Education teacher is contemplating dismissal at the end of the school year. However, the parents contend his academic performance has deteriorated because of continual difficulties in written language, lack of motivation, low self-esteem and behavior problems in the classroom.

Additional assessments were obtained by the parents. A licensed occupational therapist recommended occupational therapy sessions due to the student's poor motor planning, balance, and fine and gross motor coordination problems. An optometrist recommended a vision therapy program based on his assessment. Lastly, a physician recommended a sensory-motor integration program based on his findings.

Conclusions of Law

The hearing officer concluded that based on the persuasive evidence presented, the student's neurological disability causes him to perform poorly on paper and pencil tasks. Additionally, this inability affected his classroom behavior, and occupational therapy intervention in the younger years is more effective than when the disability becomes more severe in later years. Addressing an additional request from the parents for a Resource Specialist program for mathematics and spelling, the hearing officer indicated the student did not require individualized instruction at present. However, he did require occupational therapy to benefit from special education. Reasoning that through occupational therapy the student's fine and gross motor skills as well as his behavior would improve.

Order

Individualized Education Plan team shall meet to include goals for occupational therapy for six months.[51]

Evaluation of a handicapped child's needs for occupational therapy is considered a related service and is therefore the responsibility of the school district. This is illustrated in the following case.

In re: Santa Barbara County
School District

Issue

Whether the school district is responsible for an occupational therapy evaluation to determine a student's occupational therapy needs.

Findings of Fact

The parents requested that their eleven-year-old child, who is handicapped and attends a special education program, be given an occupational therapy assessment by a certified occupational therapist. It is their contention that this evaluation should be done to determine their child's need for sensory integration therapy. The school district sought for clarification of its role in the event the agency, California Children Services, was unable to perform the assessment.

Conclusions of Law

The student who is a handicapped child qualifies for related services. Therefore, the evaluation is "within the scope of related services" and should be done in a timely fashion at no cost to the parents to determine the child's educational needs.[52]

Order

An assessment will be done by a certified occupational therapist at no cost to the parents.

The following 1978 Due Process case was held when Florida was just implementing P.L. 94-142. However, the decision makes it clear that when a student is eligible and in need of a service, school districts must provide specialists to perform the activity.

Case No. 79-132E

Issue

Whether the school system is responsible for private occupational therapy services when no services are available within the school system.

Findings of Fact

The parents of an eight-year-old emotionally handicapped child requested a Due Process Hearing in December of 1978. At that time the school district did not have the services of an occupational therapist to provide therapy for their son. Thus, the parents requested the assignment of an outside occupational therapist to work with him.

In the 1977-78 school year the child was classified as "neurologically impaired" in the State of New Jersey and recommended for placement in an Emotionally Disturbed class. A neurologist had prescribed Ritalin for hyperactivity, but this was discontinued because of the student's inactivity.

The student transferred to a regular first grade in 1978 when the family moved to Florida. His inappropriate behaviors in the classroom, such as hitting, pinching, disobeying, and using profanity, led to a referral for psychological evaluation by his teacher. The results of the psychological assessment indicated that he had a short attention span, little control over his behavior and inappropriate social interactions. The school psychologist recommended consideration of placement in an Emotionally Handicapped class. However, at a staffing committee meeting with the parents in attendance it was concluded that the child should be placed in a Specific Learning Disabilities program.

Thereafter, the parents obtained various private evaluations. Additional educational testing also revealed problems with hyperactivity and short attention span. A recommendation was made that the child be placed on medication for the hyperactivity. After a period of time on the medication a placement decision could then be made. As a result of an occupational therapy evaluation, the therapist stated that the child could benefit from sensory integration therapy.

In August of 1978, the student was placed in a Specific Learning Disabilities program. Again, as a result of continued inappropriate behavior in the classroom, the student was referred back to the school psychologist for additional evaluation. Shortly thereafter, a staffing meeting was held and the student was found eligible for an Emotionally Handicapped program. The parents agreed with the recommendation and granted consent.

After the program placement the parents sought the private assistance of an occupational therapist and an orthopedic surgeon. The occupational therapist found the child to have muscle coordination problems. The therapist stated that these problems caused him to become easily frustrated and interfered with his ability to perform routine functions. The orthopedic surgeon's examination revealed difficulties in the child's ability to integrate muscle movements. Additionally, problems were noted with his hand coordination movements which would hinder him in pencil manipulation. For the 1978-80 school year, an occupational therapist has been hired by the school district.

Conclusions of Law

In referring to the requirements of Public Law 94-142 and Florida Statutes, the hearing officer found, on the evidence presented, that the student was entitled to occupational therapy by a qualifed occupational therapist.

Order

Occupational therapy services will commence with the 1979-80 school year.[53]

Transportation Services

Transportation is the most frequent related service provided to handicapped students throughout the United States. In the 1984-85 school year, over one million children and youths were given this service.[54]

If a handicapped student needs transportation to benefit from special education it must be provided as a related service. Any required special transportation provision, such as equipment, aide, or assistance to meet the child's individual needs, should be identified on the Individualized Educational Program (IEP). Although the definition of transportation sets the basic parameters of what constitutes transportation services for handicapped students, there are still differing interpretations of what transportation should include. Therefore, disputes do arise regarding the appropriateness of this service.

An illustration of this is the Due Process case of *In re: Lisa T.*[55] A physically handicapped child was placed on homebound because she was unable to get from her house to the bus. The issue of whether she was eligible for door-to-door or curb-to-curb transportation was resolved by a Connecticut hearing officer. It was ruled that the school district was to provide the student with door-to-door transportation plus amend the IEP to include the services of an aide to assist her between her home and van. Although the hearing officer found this was an unique case, he stated that it was not the intent of state and federal statutes that a "stumbling block" to an appropriate education be created because of the child's handicap.[56]

In re: Lisa T.

Issue

Whether the school board is responsible for door-to-door or curb-to-curb transportation for a physically handicapped child. Additionally, are homebound services appropriate for the child.

Findings of Fact

The thirteen-year-old student who functions in an Educable Mentally Handicapped range, suffers from cerebral palsy and is confined to a wheelchair for the majority of the day. She presently uses a walker inside her home and a physical therapist has begun instruction of using the walker outside the home setting.

For the past five years the student has received door-to-door transportation services through the school system. Throughout this time she has received assistance from inside her home to the vehicle transporting her.

The school district contracts with a local bus company for its services. In September of 1980, the bus company supplied a van with a hydraulic lift, but a different bus driver was given the student's route. On the third of school the driver brought the student up to the backyard. The mother, who also has a physical impairment, attempted to get her daughter into the house, but they both fell. Presently, there are no other members of the family available when the student leaves or returns from school. The mother then kept her daughter out of school and notified officials of the problem. The school district contacted the bus company and was informed that under the contract provisions the driver was not to give the student assistance to the van.

In late September a planning and placement committee meeting was held and it was recommended that the student be placed on homebound until the transportation issue could be settled. Additionally, at another meeting in September, her IEP was updated to include placement in a physically handicapped class. Homebound services were still offered as an interim measure until the transportation issue could be resolved.

In October an administrative review was held. The school board stated that its responsibility was for only curb-to-curb transportation. This is also the policy of the State Department of Education. Also, her safety could be endangered if she received services from the home to the van. Under these circumstances the board felt justified in offering homebound instruction. The school board contended that no other student receives curb-to-curb transportation. However, the State Department of Education stated that there is a policy exception if the student's IEP indicates that other transportation services are needed. Assistance by an aide can also be included in the services.

A letter from the student's physician stated that there was no reason she could not be transported safely in her wheelchair. Testimony from the physical therapist indicated that the student is able to use her walker with assistance outside her home.

Conclusions of Law

The hearing officer concluded that the student does not meet the homebound criteria and that the most appropriate program for her is the physically handicapped class. She is "receiving homebound instruction only because she cannot get to the school bus."[57] She must receive door-to-door transportation to implement her IEP goals in school.

Furthermore, the comment under Public Law 94-142 "related services" regulation states:

> ...that all such related services may not be required for each individual child, and that the term includes provision of services to minimize the effects of such handicapping conditions.[58]

Hence, "door-to-door transportation services are needed in order to minimize the effects of her handicapping conditions."[59] Specifically:

> Related services may not be required in every case and clearly, this case is to be considered as a unique one. [The student's] appropriate placement is at school. She cannot get there because of transportation problems. The letter, as well as the spirit, of both State and Federal statutes provide that a child's handicap is not meant to be the stumbling block to the child's receiving an appropriate education in the least restrictive alternative placement.[60]

Order

The school district shall place the student in the physically handicapped class. The IEP will be amended to include a transportation aide or monitor to assist the student between her home and van. Additionally, in the future her special transportation needs shall be reviewed along with the needs of other special education students in the school district.

In a similar New York State appeal, the Commissioner of Education found that the federal regulations did not require transportation in and around the home or assistance to and from the bus.[61]

City School District of
City of New York

Issue

Whether appropriate transportation for an "orthopedically impaired" student only includes services from home to school.

This is a state level appeal by a parent of a hearing officer's decision. It was held that the transportation services being offered by the school district were legal and appropriate.

The thirteen-year-old student is "orthopedically impaired" and is confined to a wheelchair. He lives with his family in a second floor apartment which has sixteen steps from the building entrance to the second floor. Additionally, there are five more steps from the street to the building entrance.

It has been necessary for the student to receive homebound instruction because the mother and her son are unable to negotiate the flight of stairs with the wheelchair. The recommended placement for the boy is in a regular class. Transportation as a related service has been offered by the district from the curb to and from school. The bus is equipped with a wheelchair lift. The services being requested would require school personnel to carry the student up and down the stairs of the private apartment building. However, the district could not be responsible or ensure the safety of the premises. It was contended by the parent that there were other students in the district who receive assistance up and down the stairs by ambulette personnel.

Testimony given during the Due Process Hearing revealed that students with severe medical problems who require medical personnel during transport are given the assistance. However, the Commissioner found the circumstances of those cases distinguishable from this one, therefore, there is no denial of equal protection of the laws.

Conclusions of Law

The Commissioner of Education stated:

> If a support service comes within the definition of related services as set forth in the statute and regulations...the district may be obligated to provide it in accordance with the needs of the particular child. But if the service does not come within the definition of related services, then it is not a service which must be provided by the school district regardless of the child's need or the ability of the parents of others to provide it.[62]

He further noted that in accordance with federal regulations transportation is required:

> ...to and from school and in and around school buildings, and require the use of specialized equipment as necessary, but they do not require transportation in and around the home or special assistance in getting to and from the school bus.[63]

In referring to the district's obligation of providing transportation services for the handicapped, the parent cited other decisions in which the phrase "door-to-door" was used to describe the service. The Commissioner responded that the district:

> does provide 'door-to-door' transportation for handicapped pupils, and that the phrase connotes a pick-up point at the home, and does not mean a literal pick-up of the child at the front door or within the building.[64]

Therefore, he held that the school district had fulfilled its legal obligation by offering appropriate transportation to and from school. Thus, the appeal is dismissed.

The Pennslyvania Secretary of Education found in the following appeal that continuous nursing services during transportation and at school were beyond the scope of "related services" required under the EHA.

In re: Bevin H.

Issue

Whether full-time nursing services at school and during transportation to and from school qualify as "related services" under the Act.

Findings of Fact

The student is a profoundly mentally handicapped child who suffers from multiple handicaps. According to the pediatrician, the student has the following conditions:

> Robinow's syndrome (fetal face syndrome); bronchopulmonary dysplasia (poor lung function with scarring); a tracheostomy tube requiring suctioning to prevent clogging of the tube and possible emergency intervention when clogging of [the child's] respiratory system occurs; gastrostomy with a tube through the abdominal wall and into the stomach to provide feeding and medication; a seizure disorder; hydrocephalus requiring shunt; legal blindness; and spastic quadriplegia.[65]

Therefore, full-time nursing services are needed for suctioning, chest physical therapy and respiratory aid. The child attended a special school under the public school system since the 1984-85 school year. During that school year the parents paid for private duty nursing service at the special center. The parents disapproved the Individualized Educational Program (IEP) for the 1985-86 school year when the school district excluded the required nursing services as part of their child's program. The parents then requested a Due Process Hearing and the hearing officer held that under the EHA that the required nursing services were considered "school health services." Therefore, the school system was responsible for the nursing care. Additionally, it was ordered that the parents be reimbursed for previous nursing care expenses incurred during the 1985-86 school year.

The district appealed this decision to the Pennsylvania Secretary of Education. It was revealed during testimony that the majority of the student's day was spent with continuous nursing care assistance versus educational training.

Conclusions of Law

In analyzing the "supportive services" required in this case, the secretary referred to the *Tatro*[66] test criteria set forth in that case. Although the first and third criteria were met in that the child is handicapped and requires special education and the life support services in question can be performed by a nurse or other qualified person, the second criterion was not met. To be eligible for this, the evidence must show that the "life support service must be necessary to aid a handicapped child to benefit from the special education to be provided."[67]

The secretary concluded that:

> ...the test is not met because the continuous private monitoring, therapy, and nursing services received by [the student] do not enable her to benefit from her education; rather, they divert considerable time and resources from her education.[68]

Furthermore,

> The testimony in this case shows that the level, skill, and frequency of the nursing and therapeutic services needed by [her] far exceed the bounds of support services.[69]

In referring to the *City of Auburn School District*[70] decision the secretary compared this case as similar in that the services requested were also continuous nursing and therapy care. The secretary concurred with the commissioner's findings distinguishing the short simple supportive services provided in *Tatro*[71] from the continuous therapeutic services called for in the *Auburn*[72] case and in this case.

Furthermore, under the definition of "school health services" it is implied that the services to be provided are for an entire school not on a one-to-one basis within the classroom. Nor does the definition state that the services will be given during transportation to and from school. Additionally, the secretary stated:

> Although courts have been expansive in requiring that schools provide 'related services' to handicapped children, we have found no case that requires the type of one-on-one service required in the instant case. To the contrary, it is apparent that courts have not always required a service to be performed as part of the 'free and appropriate education' requirement, when the costs of the services are excessive.[73]

Therefore, the secretary concluded that the services requested were beyond the level that is required of the school district. Reimbursement was also denied because the school district was not responsible for the nursing services at issue.

Order

The hearing officer's decision is reversed, and the required contested nursing services are found not to be "supportive services" or "school health services" within the "related services" definition under the EHA. Reimbursement decision was also reversed.

In the following case, the parents of a physically handicapped student requested that their child be lifted on and off the bus and into his wheelchair. They also wanted him to be transported on a regular bus with nonhandicapped students for field trip activities. However, the New York State Commissioner of Education found that the school district was providing an appropriate program offering a specially equipped bus with a lift. Also, there was no reason why nonhandicapped students could not share the same special bus for field trips.

In re: Farmingdale Union Free School District

Issue

Whether the school district is required to provide assistance in lifting a physically handicapped student into a wheelchair upon arrival at school, to transport him on a regular bus with nonhandicapped students and provide a male aide for rest room assistance.

Findings of Fact

This is an appeal of a hearing officer's decision in regards to services for a physically handicapped child who is enrolled in a regular fifth grade class.

The student who suffers from muscular dystrophy receives adaptive physical education and assistance of an aide when necessary. His parents who transport him to school contend that when he arrives at school an aide should lift him into a wheelchair. Additionally, when he is going on field trips, he should be transported with nonhandicapped peers and lifted on and off the bus by an aide. Lastly, the school system should provide a male aide when he needs assistance in the rest room. The school district did hire a female aide for assistance as there were no male applicants. However, the school district contends it is not the role of the aide to routinely lift a student and this procedure should be avoided. To evade this the school district has made available a specially designed "minibus" to transport the student. The

Commissioner of Education noted the "minibus" could also be shared by nonhandicapped students for field trips.

For the purposes of mainstreaming, the parents requested their son be able to use the boy's rest room and not the lavatory in the nurse's office. Responding to this issue the commissioner stated it appeared the district would have hired a male aide had one been available. In conclusion, the commissioner held that the school district:

> ...is required to furnish an appropriate educational program but is not obligated to provide the best possible program...I find that respondent has furnished an appropriate program of education and related services for petitioners' son.[74]

Order

Appeal is dismissed.

Footnotes for Chapter IV

[1] Florida, *Florida State Board of Education Administrative Rules*, 6A-6.03311(5)(a) FAC, 1986.

[2] *Id.*, 6A-6.03311(5)(g).

[3] *In re: Contra Costa County Consortium/San Ramon Valley Unified School District*, 3 E.H.L.R. at 507:302 (CA 1985).

[4] *Id.*

[5] *Id.*

[6] *Case No. SE-53-81*, 3 E.H.L.R. at 506:240 (Il. 1984).

[7] *Id.*

[8] *Detsel v. Board of Education of the Auburn Enlarged City School District*, 3 E.H.L.R. 557:335 (ND NY 1986).

[9] *In re: City of Auburn School District*, 3 E.H.L.R. at 506:378 (NY 1985).

[10] *Irving Independent School District v. Tatro*, 3 E.H.L.R. 555:514 (U.S. Sup. Ct. 1984).

[11] *In re: City of Auburn School District*, 3 E.H.L.R. at 506:379 (NY 1985).

[12] *Id.*, at 506:380.

[13] *Tokarcik v. Forrest Hills School District*, 665 F.2d 443, Cert. denied 102 S. Ct. 3508 (1982).

[14] *Department of Hawaii v. Katherine D.*, 727, F2d 809 (CA-9 1984).

[15] *In re: City of Auburn School District*, 3 E.H.L.R. at 506:380 (NY 1985).

[16] *Case No. SE-27-84*, 3 E.H.L.R. at 506:103 (IL 1984).

[17] *Case No. SE-27-84*, 3 E.H.L.R. at 506:105 (IL 1984).

[18] *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983).

[19] *Department of Education of Hawaii v. Katherine D.*, 727 F.2d 809 (9th Cir. 1984).

[20] *Case No. SE-27-84*, 3 E.H.L.R. at 506:105 (IL 1984).

[21] *Id.*

[22] *In re: Stoneham Public Schools*, 3 E.H.L.R. at 503:207 (MA 1982).

[23] *In re: Kern Union High School District*, 4 E.H.L.R. Ct. at 508:147 (CA 1986).

[24] *Irving Independent School District v. Tatro*, 104 S. Ct. 3371 (1984).

[25] *In re: Kern Union High School District*, 4 E.H.L.R. at 508:148 (CA 1986).

[26] *Palos Verdes Peninsula Unified School District*, 3 E.H.L.R. at 507:123 (CA 1985).

[27] *In re: Vallejo City Unified School District*, 3 E.H.L.R. at 507:199 (CA 1985).

[28] *Board of Education v. Rowley*, 3 E.H.L.R. 553:656, 102 S. Ct. 3034 (1982).

[29] *Id.*

[30] *In re: Fullerton Elementary School District/California Children's Services*, 4 E.H.L.R. at 508:258 (CA 1986).

[31] *Id.*

[32] *Thomas B. v. Radnor Township School District*, 3 E.H.L.R. 502.177 (PA 1980).

[33] *Id.*, at 502:180

[34] *Id.*, at 502:177

[35] *Id.*, at 502:178.

[36] *Id.*, at 502:181.

[37] *Id.*, at 502:179.

[38] *Id.*

[39] *In re: Wilmington Public Schools*, 3 E.H.L.R. at 503:239 (MA 1982).

[40] *Case No. SE-28-84*, 3 E.H.L.R. at 507:172 (IL 1985).

[41] *Id.*

[42] *Id.*, at 507:173.

[43] *Id.*

[44] *Battle v. Commonwealth of Pennslyvania*, 629 F.2d 269 (3rd Cir. 1980); *Crawford v. Pittman*, 708 F.2d 1028 (5th Cir. 1983); and *Case No. SE-28-84*, 3 E.H.L.R. 507:173-174 (IL 1985).

[45] *Id.*, at 507:174

[46] *Case No. SE 48-84*, 3 E.H.L.R. at 507:117 (IL 1985).

[47] *In re: Framingham Public Schools*, 3 E.H.L.R. at 503:110 (MA 1981).

[48] "Education of the Handicapped Regulations," 34 Code of Federal Regulations, Part 300, No. 300:13 (5)(111), *Education for the Handicapped Law Report*, Vol. 1 (Washington: CRR Publishing Company, 1981), p. 102:54.

[49] *In re: Lisa D.*, 4 E.H.L.R. at 508:115 (MA 1986).

[50] Ibid., at 508:117.

[51] *In re: Orange Unified School District*, 3 E.H.L.R. at 507:493 (CA 1986).

[52] *In re: Santa Barbara County School District*, 3 E.H.L.R. at 502:128 (CA 1980).

[53] *Case No. 79-132E*, State of Florida, Division of Administrative Hearings (FL 1979).

[54] U.S. Department of Education, Office of Special Education Programs, *Ninth Annual Report of Congress on the Implementation of the Education of the Handicapped Act*, (1987), p. 52.

[55] *In re: Lisa T.*, 3 E.H.L.R. 502:230 (CN 1980).

[56] *Id.*, at 502:232.

[57] *Id.*, at 502:232.

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *City School District of City of New York*, 4 E.H.L.R. at 508:283 (NY 1986).

[62] *Id.*, at 508:283.

[63] *Id.*

[64] *Id.*, at 508:284.

[65] *In re: Bevin H.*, 4 E.H.L.R. at 508:135 (PA 1986).

[66] *Tatro v. State of Texas*, 625 F.2d 557, 562-63 (5th Cir. 1980), aff'd subnom.; and *Irving Independent School District v. Tatro*, 468 U.S., 104 S. Ct. 3371 (1984).

[67] *In re: Bevin H.*, 4 E.H.L.R. at 508:137 (PA 1986).

[68] *Id.*

[69] *Id.*

[70] *In re: City of Auburn School District*, 3 E.H.L.R. 506:378 (NY 1985).

[71] *Tatro v. State of Texas*, 625 F.2d 557, 562-63 (5th Cir. 1980), aff'd subnom; and *Irving Independent School District v. Tatro*, 468 U.S., 104 S. Ct. 3371 (1984).

[72] *In re: City of Auburn School District*, 3 E.H.L.R. 506:378 (NY 1985).

[73] *In re: Bevin H.*, 4 E.H.L.R. at 508:138 (PA 1986).

[74] *In re: Farmingdale Union Free School District*, 3 E.H.L.R. 503:219 (NY 1982).

CHAPTER V

STATE OF FLORIDA RELATED SERVICES

In a *1985-86 United States Department of Education Annual Data Report*,[1] the State of Florida reported related services as being provided for handicapped children and youths ages 3-21 (see Appendix A). Children ages 0-2 who receive services for early identification are also included. As this is a duplicated count, children are reported in each area of related service they receive. The reported students must also be receiving special education. Specifically, of the related services provided in the state, occupational therapy accounts for 1.7 percent, physical therapy 1.3 percent, transportation 8.1 percent, and school health services 14.6 percent. The highest percentage of related services provided is for counseling, 23.2 percent, and psychological services constituting 16.5 percent. School health services ranks third in the most often related service children receive in the state.

The "School Health Services Act"

The "School Health Services Act" of 1974[2] governs the provision of health services for Florida school students. The intent of the legislation in enacting this law was that:

It has been over a decade since this legislation and the passage of P.L. 94-142. During this period of time the scope of activities provided under School Health Services has expanded to include a vast array of assistance to handicapped students. This is evidenced by a School Health Services for Exceptional Students Survey (Table 1) conducted in March of 1986 by the State of Florida, Department of Health and Rehabilitative Services.

> ...health services conducted as part of the total school health program should be carried out to appraise, protect, and promote the health of students. School health services supplement rather than replace parental responsibility, and are designed to encourage parents to devote attention to child health, to discover health problems, and to encourage use of the services of their physicians, dentists, and community health agencies.[3]

TABLE 1

STATE OF FLORIDA
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES
SCHOOL HEALTH SERVICES FOR EXCEPTIONAL STUDENTS SURVEY

SCHOOL HEALTH CARE SERVICES	Number of students receiving service	(✓) if you have procedure for the service	Personnel Categories for Health Providers check (✓) all that apply								(✓) if Training is needed**
			Registered Nurse	Licensed Practical Nurse	Health aide/attendant	Teacher	Teacher aide	Parent	Volunteer	Other	
Medication Administration	1520	x	x	x							
Suctioning (oral, nasal, endotracheal)	26		x	x							x
Tracheostomy care	17										x
Other osteomy care	38					x	x				
Oxygen administration	38										x
Feeding	226					x	x			x	x
Tube feeding	58					x	x			x	x
Urinary catheterization	143	x	x	x		x	x			x	x
Positioning	1008					x	x				x
Toileting	1334					x	x				
Diapering	1013					x	x				
Ambulation	480					x	x				x
Ambulation with assistive devises	707					x	x				
Diet Management	481										x
Dressing changes	223										
Respiratory therapy	5										

Postural drainage, cupping, vibrating	24										
Physical therapy	2158	x								x	x
Seizure management	940	x	x	x		x	x				x
Nasogastric tube care	14					x		x			
Other indwelling tube care	9					x		x			
Management of infections	1006		x	x							
Management of allergies	311		x	x							
Shunt care	205		x	x		x	x				x
Health counseling of students	2235										
Health counseling of parents	1443										
Involvement in development of IEP	1849					x	x	x			
Other (specify) renal dial.	1										
Other (specify) ventilator	1										
Other (specify) O.T.	232										
Other (specify)											
Other (specify)											
Other (specify)											

SOURCE: Florida Department of Health and Rehabilitative Services, *Survey of School Health Services for Exceptional Students*, (1986).

One part of the survey listed the various special health care services that handicapped students presently receive in the school setting. The respondents indicated the number of students receiving the service and who performs the service. The school district also noted if they had written procedures for the service and if training was needed by school personnel to carry out the service.

Thirty-eight Florida school districts responded to the survey. The greatest number of students received services in medication administration, positioning, toileting, diapering, physical therapy, management of infections, IEP development, and health counseling.

The services most often performed by either Registered or Licensed Practical Nurses included medication administration, suctioning, urinary catheterization, seizure management, management of infections and allergies and shunt cares. Therefore, the qualifications of the personnel performing the services is dependent upon the complexity and type of service to be given.

To further investigate the provision of school health services in Florida, the author conducted a survey of the sixty-seven school districts in the state. The survey focused specifically on the number of handicapped children in Florida who were in need of catheterization and/or suctioning services in December of 1986.

As presented in Table 2, there were forty-four students requiring suctioning in twenty of the school districts. Of these districts, 45 percent of them provided individuals who were qualified as Registered Nurses to perform this service. Twenty percent of the school districts utilized Licensed Practical Nurses. While some school districts have trained teachers and/or aides to perform this school health service, they are the least likely to be given this responsibility among the districts. Teachers perform this service by themselves in only 10 percent of the school districts. However, they share the responsibility with parents in two particular cases which involve a child who is on homebound and the other situation involves a student in the classroom setting. This activity is also shared between a teacher and an aide in one school district. Aides provide this service by themselves in only 10 percent of the counties.

Thus, 65 percent of the districts provide for skilled medical personnel to perform these school health services. Within these districts, medical personnel are responsible 56.5 percent of the time for this activity, while educational personnel are responsible for 34.8 percent. Parents assume responsibility for 8.6 percent of this activity.

TABLE 2

NUMBER OF HANDICAPPED SCHOOL CHILDREN IN FLORIDA AS OF DECEMBER 1, 1986, REQUIRING SUCTIONING SERVICES

County	Number of students requiring suctioning	Personnel Categories for Health Providers check (✓) all that apply								
		Procedures Performed by: Teacher	Aide	Parent	LPN	RN	Other	Services Provided by: Health Department	School System	Other
Alachua	1					x			x	
Baker	0									
Bay	1					x		x	x	
Bradford	0									
Brevard	3	x	x						x	x
Broward	0									
Calhoun	0									
Charlotte	0									
Citrus	1				x				x	
Clay	0									
Collier	0									
Columbia	1					x			x	
Dade	5					x			x	
DeSoto	0									
Dixie	0									
Duval	5					x			x	
Escambia	2	x		x					x	

Flagler	0									
Franklin	0									
Gadsden	1	x							x	
Gilchrist	0									
Glades	0									
Gulf	0									
Hamilton	1		x						x	
Hardee	0									
Hendry	0									
Hernando	0									
Highlands	0									
Hillsborough	1		x						x	
Holmes	0									
Indian River	0									
Jackson	0									
Jefferson	0									
Lafayette	0									
Lake	0									
Lee	3					x			x	
Leon	4					x			x	
Levy	0									
Liberty	0									
Madison	0									
Manatee	0									
Marion	2	x		x					x	
Martin	1				x				x	
Monroe	0									
Nassau	0									
Okaloosa	0									

Okeechobee	0									
Orange	7					x			x	
Osceola	0									
Palm Beach	0									
Pasco	1				x					
Pinellas	0									
Polk	1				x				x	
Putnam	1					x			x	
St. Johns	0									
St. Lucie	0									
Santa Rosa	2	x							x	
Sarasota	0									
Seminole	0									
Sumter	0									
Suwannee	0									
Taylor	0									
Union	0									
Volusia	0									
Wakulla	0									
Walton	0									
Washington	0									
TOTAL	44	5	3	2	4	9	0	1	19	1

School districts have more students requiring catheterization and catheter care than suctioning. As illustrated in Table 3, there were 166 handicapped students in thirty school districts with a medical condition that required this service.

Fewer medical personnel are utilized for performing catheterization services than suctioning. While 29.8 percent are either Registered or Licensed Practical Nurses, educational staff perform 38.3 percent of the needed services. However, 27.7 percent are capable of performing self-catheterization or require minimal assistance. Parents assist their children in only 4.2 percent of the cases.

In both of these services, the school system has the primary responsibility for the service. However, in a few districts the county health department plays a role by either providing personnel to the schools or training existing school personnel. Larger school districts more often provide medical personnel to perform these school health services.

Florida Statute, Chapter 464, known as the "Nurse Practice Act," states that the practice of professional nursing shall include but is not limited to:

> The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the maintenance of health and prevention of illness of others.

Also,

> ...the administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.

And, "The supervision and teaching of other personnel in the theory and performance of any of the above acts."[4]

However, Florida school district personnel are authorized to assist students in the administration of prescription medication under Florida Statutes 232.46. When proper training is given designated personnel and the school board adopts policies and procedures which govern this assistance. These policies and procedures shall include:

> For each prescribed medication, the student's parent or guardian shall provide to the school principal a written statement which shall grant to the principal or his designee permission to assist in the administration of such medication and which shall explain the necessity for such medication to be provided during the school day including any occasion when the student is away

TABLE 3

NUMBER OF HANDICAPPED SCHOOL CHILDREN IN FLORIDA AS OF DECEMBER 1, 1986, REQUIRING CATHETERIZATION

County	Number of students requiring suctioning	Procedures Performed by: Teacher	Aide	Parent	LPN	RN	Other	Services Provided by: Health Department	School System	Other
Alachua	23		x				x		x	
Baker	0									
Bay	3					x	x	x	x	
Bradford	0									
Brevard	3	x	x				x		x	x
Broward	12	x	x						x	
Calhoun	0									
Charlotte	0									
Citrus	3				x				x	
Clay	1				x				x	
Collier	0									
Columbia	2				x				x	
Dade	2					x			x	
DeSoto	0									
Dixie	0									
Duval	20					x			x	
Escambia	0									
Flagler	0									
Franklin	0									

Gadsden	0									
Gilchrist	0									
Glades	0									
Gulf	0									
Hamilton	0									
Hardee	0									
Hendry	1						x		x	
Hernando	1		x				x		x	
Highlands	2	x	x						x	
Hillsborough	9		x				x		x	
Holmes	0									
Indian River	1					x		x		
Jackson	3	x	x	x					x	
Jefferson	0									
Lafayette	0									
Lake	2			x			x	x		
Lee	1					x			x	
Leon	3	x	x						x	
Levy	0									
Liberty	0									
Madison	0									
Manatee	4	x	x			x		x	x	
Marion	1						x		x	
Martin	0									
Monroe	0									
Nassau	0									
Okaloosa	0									
Okeechobee	2		x						x	
Orange	20				x				x	

Osceola	4		x						x	
Palm Beach	1					x			x	
Pasco	0									
Pinellas	17					x	x	x		
Polk	10	x			x				x	
Putnam	2						x		x	
St. Johns	0									
St. Lucie	0									
Santa Rosa	2						x		x	
Sarasota	1						x		x	
Seminole	0									
Sumter	0									
Suwannee	0									
Taylor	0									
Union	0									
Volusia	10				x		x		x	
Wakulla	0									
Walton	0									
Washington	0									
TOTAL	166	7	11	2	6	8	13	5	27	1

*Denotes students who perform self catheterization or receive some assistance

> from school property on official school business. The school principal or his trained designee shall assist the student in the administration of such medication.

Also,

> Each prescribed medication to be administered by school personnel shall be received and stored in its original container. When the medication is not in use, it shall be stored in its original container in a secure fashion under lock and key in a location designated by the principal.

Lastly,

> There shall be no liability for civil damages as a result of the administration of such medication when the person administering such medication acts as an ordinarily reasonably prudent person would have acted under the same or similar circumstances.[5]

CHAPTER VI

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The historical analysis of related services litigation for handicapped children was to provide updated knowledge for professionals in the specific areas addressed. Thus, if appropriate education is to be provided to the handicapped, decision makers must be familiar with not only the law but with court and administrative decisions.

In reviewing the history of special education in the United States, it was found that the parents of handicapped children throughout this country provided the impetus for accessibility to public education for their children. They sought the administrative remedy of the courts for their answers. The decision in the landmark court cases in *Pennsylvania*[1] and *Mills v. Board of Education of the District of Columbia*[2] first provided access to public education for handicapped children. In 1973 Section 504 of the Vocational Rehabilitation Act was enacted to prohibit discrimination against the handicapped. Educational provisions by the federal government for handicapped children were yet to follow.

It was not until the enactment of the Federal Statute in 1975 of The Education for All Handicapped Children Act that handicapped children were guaranteed a free appropriate public education to meet their unique individual needs. Although the Act unfolded opportunities never before given to the handicapped, its equivocal language lead to an aftermath of litigation. It has been this ambiguous language in the statute and of related services that has caused an inherent problem in interpreting the parameters constituting these services.

Hence, in 1982 an attempt was made to deregulate P.L. 94-142. Significant changes were proposed in the area of related services in the hopes of providing more flexibility to persons responsible for administering special education programs. However, the subcommittee found the proposed regulations inconsistent with the Act and rejected them.

Consequently, it has been the courts and state administrative decisions that have served as legal precedents in interpreting the law and its intent in determining the extent to which handicapped children are entitled to these services.

In answering the aforementioned questions, primary sources of information were reviewed. Most importantly, selected judicial and state level administrative decisions were analyzed and presented with the Issue, Findings of Fact, Conclusion of Law, and the Order. Areas of specific related services addressed included medical services, Occupational Therapy, Physical Therapy, school health services and transportation of the physically impaired. Provisions for related services for handicapped children in Florida were also investigated with special emphasis on school health care services in suctioning and catheterization. Guidelines for adminstrators in the related service areas studied are set forth in the conclusions.

The cases which have been discussed are presented in summary Tables 4 and 5. These are chronologically organized and divided into judicial and state level decisions with the Point of Law given. Thus, they may be used for a quick reference index. However, to fully understand the merits of the case the brief presented in this study or the entire case should be read.

With the concise information presented, administrators should understand more fully the scope of related services and, therefore, make decisions that are appropriate for all handicapped children.

Conclusions

The major findings to the questions posed have been the basis for this study and are hereby stated:

1. What constitutes a related service under the Act?

The Education of the Handicapped Act, 20 U.S.C. 1401 (17), defines related services as:

> transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.[3]

The definitions of these services and other services for which a handicapped child may be eligible for are stated in the regulations found in Chapter I of this study.

2. What is the scope of related services under the courts' interpretations?

TABLE 4
JUDICIAL CASES

DATE	CASE	POINT OF LAW	PAGE
1954	*Brown v. Board of Education*	Equal educational opportunity for all children	2
1971	*PARC v. Pennslyvania*	Access to public education for all mentally handicapped.	3
1972	*Mills v. Board of Education of the District of Columbia*	Access to public education for all excluded handicapped children.	4
1981	*Anderson v. Thompson*	Compensatory damages are only available under exceptional circumstances.	49
1981	*Tokarcik v. Forest Hills School District*	Clean intemittent catheterization is a school health service under related services. Additionally CIC must be provided in the least restrictive environment.	39
1981	*Woods v. Pittman*	Physicians' services provided at a residential facility for diagnostic and evaluation purposes are the financial responsibility of the school district.	61
1982	*Board of Education v. Rowley*	Additional supportive services for handicapped children are not required when they are already benefiting educationally. Furthermore, the Act does not require school districts "to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children."	28, 48
1983	*Maurits v. Board of Education of Harford County*	When Physical Therapy is not necessary for a handicapped child to benefit from special education it is not required.	56
1983	*T.G.V. v. Board of Education of Piscataway*	Psychotherapy is a related service under the Act.	29
1984	*Department of Education v. Katherine D.*	Affirmed Tracheostomy care is a school health service therefore it falls within the definition of related services.	44
1984	*Hurry v. Jones*	Parents of a physically handicapped student may be reimbursed for their time and effort in transporting their child to and from school.	

1984	*Irving Independent School District v. Tatro*	Affirmed clean intermittent catheterization (CIC) is a supportive service therefore it is within the related service definition.	34
1984	*Los Gatos Joint Union High School v. Doe*	Hospitalization and Treatment Therapy is a medical service which is beyond those covered under related services.	63
1984	*Smith v. Robinson*	EAHCA does not make a provision for an award of attorney's fees.	38
1985	*Kennedy v. Board of Education McDowell County*	Failure to provide transportation on private road to handicapped children denies them "equal protection of the laws."	30
1985	*Seals v. Loftis*	Psychological and neurological assessments are the responsibility of the school district when they are for diagnostic and evaluation purposes.	59
1986	*Detsel v. Board of Education of the Auburn*	Constant nursing care is not required as it is beyond the scope of related services.	52

TABLE 5

STATE LEVEL ADMINISTRATIVE DECISIONS

DATE	CASE	POINT OF LAW	PAGE
1979	*Case No. 79 - 132E*	Under P.L. 94-142 Occupational Therapy is a related service which must be provided when appropriate.	120
1980	*In re: Lisa T.*	A physically handicapped student shall receive door-to-door transportation to include aide assistance between the home and van for appropriate placement.	124
1980	*In re: Santa Barbara County School District*	An occupational therapy evaluation is the responsibility of the school district in determining the educational needs of a student.	118
1980	*Thomas B. v. Radnor Township School District*	A physically impaired student who is successful in the mainstream is not eligible for special education or related services.	98
1981	*In re: Framingham Public Schools*	Neuro-developmental therapy is not required when the schools' physical and occupational therapists are able to address the same goals.	111
1982	*In re: Farmingdale Union Free School District*	Specially equipped bus and present program provide an appropriate education. School districts are not required to provide the best possible program.	135
1982	In re: Stoneham *Public schools*	Related services must be provided by the school district in the home setting when a child's medical problems are severe.	84
1982	*In re: Willmington Public Schools*	The school district is responsible for providing a pre-school child with physical therapy intervention services.	102
1984	*Case No. SE 53-81*	Due to the child's unresponsive state, he can not benefit from educational services and is therefore not eligible for special education.	73
1984	*Case No. SE-27-84*	School district must provide severely handicapped boy with ventilator, catheterization, suctioning assistance and temperature control environment for participation in public school program.	81

1985	*Case No. SE 28-84*	Physical Therapy must be continued through the summer when a student would regress without the service.	103
1985	*Case No. SE 48-84*	The same physical therapist must continue a student's therapy until the school district is able to determine that there would be no harmful effects on the student by changing therapists.	108
1985	*In re: City of Auburn School District*	The skilled nursing care required are beyond those required of school health services; hence, homebound instruction is appropriate.	76
1985	*In re: Contra Costa County Consortium/San Ramon Valley Unified School District*	Handicapped child who is almost comatose can benefit from special education and is therefore eligible for services.	71
1985	*In re: Palos Verdes Peninsula Unified School District*	Psychiatrist's monitoring of medication is excluded as a related service.	89
1985	*In re: Vallejo City Unified School District*	Direct physical therapy is appropriate for a severely handicapped student who had previously demonstrated ability to benefit from therapy.	93
1986	*In re: Bevin H.*	Constant nursing care is beyond the scope of related services.	131
1986	*City School District of City of New York*	Related services includes transportation services to and from school not "door-to-door."	128
1986	*In re: Fullerton Elementary School District/California Children's Services*	Direct physical therapy is not required to maximize a student's potential.	95
1986	*In re: Fullerton Elementary School District/California Children's Services*	Direct physical therapy is not required to maximize a student's potential.	95
1986	*In re: Kern Union High School District*	Psychiatric treatment is a medical service which is excluded as a related service.	
1986	*In re: Lisa D.*	A substitute program may not be provided when direct occupational therapy services are appropriate.	113
1986	*In re: Orange Unified School District*	Occupational therapy is required to benefit from special education.	116

The range of related services as viewed by the courts is consistent with the "comment" following the regulations in that they are "not exhaustive" and "may include other developmental, corrective, or supportive services...if they are required to assist a handicapped child to benefit from special education."[4]

Due to the fact "school health services" are not defined in the regulations and only state who can provide this activity, it has been left to the courts to clarify what these services include.

The United States Supreme Court ruled in *Tatro*[5] that clean intermittent catheterization (CIC) is a related service under the EHA. It found that CIC was not considered a medical service but was a "supportive service" which fell within the definition of school health services. Chief Justice Burger noted the limiting criteria in considering a school district's obligation in meeting the health and educational needs of its handicapped children:

> First, to be entitled to related services a child must be handicapped so as to require special education. Second, only those services necessary to aid a handicapped child to benefit from special education must be provided, regardless of how easily a school nurse or lay person could furnish them. Third, the regulations state that school nursing services must be provided only if they can be performed by a nurse or other qualified person, not if they must be performed by a physician.[6]

Likewise, in *Tokarcik v. Forest Hills School District*[7] the U.S. Court of Appeals, Third Circuit, found that CIC was also a related service which did not have to be specifically educational in nature. Furthermore, these services are necessary for the child to benefit from placement in the least restrictive environment, the regular classroom setting. Thus, advancing "the mainstreaming principle embodied in the EACHCA."[8]

In further defining related services, the Appellate Court found in *Department of Education v. Katherine D.*[9] that tracheostomy care was a "school health service" which must be provided in the "least restrictive environment."

Finding the individual circumstances of the case in *Detsel v. Board of Education of the Auburn Enlarged City School District*[10] dissimilar to *Tatro*[11] the court held that the constant nursing care a handicapped child required in school was beyond the scope of related services under the EAHCA. Referring to the Supreme Courts' analysis of medical services in *Tatro*,[12] the court stated that the Congressional intent was to "spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence."[13] Thus, the required services in this case were found to parallel the excluded medical services under the EAHCA.

Psychological services and medical services that are for diagnostic and evaluation purposes are considered to be related services under the EAHCA. The courts' conclusion in *Seals v. Loftis*[14] make it clear that this is the school district's responsibility. Thus, in *Los Gatos Joint Junior High School District v. Doe*[15] the school district was not held responsible for the hospitalization and treatment expenses of an Emotionally Handicapped student as these services are not within the realm of medical services covered under the EAHCA.

When a handicapped child needs the related service of transportation to benefit from special education it is the school district's responsibility. In *Hurry v. Jones*[16] the court held that the parents of a handicapped student were entitled to compensation for their time and effort in transporting their handicapped child to and from school during the period of dispute over special transportation services.

It is evident that through the courts' interpretations they have provided the necessary guidance in further defining the scope of related services and will continue to do so.

3. What ramifications do the courts and State level Administrative Decision interpretations have on a school system?

The court interpretation of the EHA not only sets a precedent but defies the extent and scope of special education and related services that school district's are to provide for handicapped children under the Act. As special education litigation continues to evolve, standards will be set for the decision makers in special education.

Failure of the state educational agency or local educational agency to comply with the requirements of the Act can result in the withholding of federal funds to these agencies. Procedural safeguards provide for the assurance of a free appropriate public education for all handicapped children. These procedural protections include the right to a due process hearing, appeal to district court, and state or federal trial court for issues involving fundamental constitutional rights violations. With the enactment of the Handicapped Children's Protection Act of 1986, courts now have the authority to award attorneys' fees to the prevailing party in an action brought under the Act.[17] However, there currently exists a controversy regarding the legal interpretation of whether or not attorneys' fees are available for impartial due process hearings. It appears that this conflict will have to be settled by the courts.

As school districts continue to meet the needs of its handicapped children the demands placed on its limited resources in the areas of funding, personnel, and facilities will persist. Hence, administrative priorities and decisions that were not considered a decade ago can not now be overlooked.

4. What provisions do the Florida Statutes and State Board of Education Administrative Rules make for the related services for handicapped students?

Exceptional students in the State of Florida include not only the handicapped but those students who are considered to be gifted. Provisions for these students within the state are found in Chapter I of this study. It should be noted that in Florida speech and physical and occupational therapy are considered special education programs for the purpose of funding under the Florida Education Finance Program. Under the EHA regulations 300.14 (a) (2)[18] these programs would not be considered related services due to Florida standards. An edited office of Special Education Program policy intepretation as to whether a Local Education Agency would "be legally obligated to provide physical therapy for an individual who does not require special education"[19] states:

> PT is included in the list of related services in both the Statute and regulations...the term 'related services' means...Thus, if a handicapped child does not need special education there can be no related services as that term is defined in the Federal regulations.
>
> Second, as provided for under Reg. 121 a 14 (a)(2), if your state standard defines PT as 'special education,' it would be appropriate to provide PT to the child who does not require placement in the special education classroom.[20]

The State of Florida further specifies under State Board of Education Administrative Rules 6A-6.3024 and 6A-6.3025 the eligibility criteria for special programs for exceptional students who require physical and occupational therapy.[21]

5. What does Florida law encompass on who can provide school health care services?

The "School Health Services Act" and the "Nurse Practice Act" under Florida Statute govern the provision of who can provide school health care services in the State of Florida. This information is found on pages 139, 142, 154 and 155 of this study.

6. What are the Florida local education agencies presently providing for the handicapped under school health services?

Presently there is a vast array of school health services provided for handicapped students in Florida. These services are noted in Table 1, page 140.

7. What can administrators do to comply with these requirements?

The following guidelines can assist administrators in making decisions for an appropriate education for handicapped students. However, these guidelines do not constitute legal advise.

Related Services Guidelines

The EHA regulations state that "related services" must be provided to a handicapped child if these services assist the child in benefiting from special education. Therefore, a child must need special education to receive related services.

If state standards consider a related service to be a specially designed instructional program, a handicapped student does not have to be eligible for another special education program to receive that service.

Related services are required only when they are appropriate. Hence, all handicapped children do not need related services.

A handicapped child may not be eligible for special education and related services if the child is in an unresponsive state and unable to benefit from special education services.

Appropriate educational services for a handicapped student must be decided by a team of individuals with expertise in their area.

Related services must be identified in the student's Individual Education Program.

Related services that are specified in the Individual Education Program must be at no cost to the parents.

This list of related services as specified in the definitions within the EHA regulations are not exhaustive. Therefore, other services may be required if they are needed to assist a handicapped student in benefiting from special education.

Parents have a right to a Due Process Hearing if they disagree with the proposed related services.

Medical Services Guidelines

Medical services are considered a related service under the EHA. These services are limited to diagnosis and evaluation of medically related handicapping conditions in children.

Medical services must be provided by a licensed physician. An individual providing these services must be considered to be "qualified" in their area of expertise by state standards. Examples may include services from a psychiatrist for an emotional evaluation, or a neurologist for a suspected neurological impairment.

EHA part B funds may not be used for medical services which are not for evaluation or diagnostic purposes. Parents of handicapped children are not required to use their private medical insurance for diagnosis or evaluation services when a financial cost would be imposed upon them by using their benefits.

If a student is in need of medical treatment, it is not the responsibility of the school district. This is considered to be beyond the definition of medical services.

Supportive and School Health Services Guidelines

School health services are those services that can be performed by a qualified school health nurse or other individuals who are considered qualified under state standards.

Clean intermittent catheterization and tracheostomy care are related services under the EHA and are considered school health services. Instruction in self-catheterization may be considered occupational therapy.

School health or supportive services do not qualify as related services if the required activity can appropriately occur at other times of the day for the handicapped child rather than during school hours.

If the least restrictive environment for a handicapped student is a regular education placement, related services such as clean intermittent catheterization must be provided to enable the student to benefit from that program.

Constant in-school nursing care, which is complex and requires competencies beyond a school nurse, is more medical in nature and excluded under the Act.

Physical and Occupational Therapy Guidelines

In determining whether a handicapped student needs direct or consultative physical or occupational therapy, the Individualized Educational Program Committee must carefully consider the students' individual needs and their ability to benefit from these therapies.

Under the *Rowley* standard, there is no requirement that a school district must maximize a handicapped child's potential.

Evaluation for physical and occupational therapy services is a related service and is, therefore, the responsibility of the school district to provide it in a timely manner at no cost to the parents.

School districts must consider the importance of early intervention in providing physical or occupational services to handicapped students.

A handicapped student may be eligible for physical therapy during the summer months if the interruption of services would cause a student to regress and therefore affect his/her educational programs.

When school districts lack their own qualified personnel to perform therapy services, they still have the responsibility to provide these services to eligible handicapped students. Consideration should be given for contractual services.

Transportation Guidelines

Transportation must be provided as a related service if it is required for a handicapped child to benefit from special education. A handicapped student must require special education services to be eligible for transportation as a related service. All handicapped students do not need special transportation.

The need for special transportation and its provisions must be decided on an individual basis. The Individualized Educational Program Committee should discuss what is appropriate and include it in the student's Individual Education Program. In individual cases, transportation aides may be necessary to assist or monitor handicapped students. Eligible handicapped students who require special transportation receive this service at no cost to their parents.

School districts must provide specialized equipment on vehicles when these adaptations are necessary in transporting a handicapped child.

Recommendations for Further Research

Recommendations for further study are:

1. As special education litigation continues to evolve, it is imperative for administrators to stay abreast of current court interpretations. Studies which present updated information in special education and related services should be provided
2. School health services will be further defined by the courts, hence, studies should occur as to what is considered appropriate for handicapped students within state standards.
3. The standard of when a handicapped child can not benefit from special education is still to be established. This issue should be analyzed in further studies.

APPENDIX

APPENDIX A

FLORIDA HANDICAPPED CHILDREN AND YOUTH RECEIVING RELATED SERVICES

APPENDIX A

FLORIDA HANDICAPPED CHILDREN AND YOUTH RECEIVING RELATED SERVICES

FILE 61.137 FLORIDA DEPARTMENT OF EDUCATION 10/28/86
TOTAL REPORT BY AGE BY SERVICE OF CHILDREN AND YOUTH RECEIVING RELATED SERVICES 1985-86
PAGE 1 of 4

DISTRICT	EARLY PSYCHOLOGICAL SERV.					SCHOOL SOCIAL WORK				OCCUPATIONAL THERAPY			
	0-2	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21
ALACHUA	0	0	0	0	0	0	0	0	0	11	23	43	21
BAKER	0	1	48	63	16	0	1	22	14	0	10	3	0
BAY	0	41	203	238	19	24	170	140	16	12	46	14	6
BRADFORD	0	0	0	0	0	0	0	0	0	3	4	0	0
BREVARD	33	106	956	1142	172	121	601	562	95	148	219	130	51
BROWARD	7	197	1892	880	98	7	2796	1765	28	4	251	71	5
CALHOUN	0	0	17	27	1	0	0	0	0	0	0	0	0
CHARLOTTE	0	16	165	136	10	0	0	0	0	10	17	22	3
CITRUS	6	67	110	101	9	0	10	5	1	8	25	8	2
CLAY	0	15	377	151	0	0	34	32	0	22	248	117	0
COLLIER	1	18	754	524	26	15	485	259	22	2	30	7	1
COLUMBIA	0	12	83	33	2	7	84	45	0	0	0	0	0
DADE	21	280	2548	4400	473	175	1374	1674	241	96	240	90	25
DESOTO	0	9	61	31	3	2	4	9	0	0	8	0	0
DIXIE	0	0	16	31	1	0	0	0	0	0	0	0	0
DUVAL	13	12	1079	673	84	0	451	375	68	32	249	111	8
ESCAMBIA	27	25	105	156	17	29	226	299	19	12	38	32	3
FLAGLER	0	0	0	0	0	0	0	0	0	0	0	0	0
FRANKLIN	0	9	92	92	4	0	0	0	0	0	8	4	0
GADSDEN	0	8	93	121	17	33	58	46	0	7	15	6	2
GILCHRIST	0	0	0	0	0	0	1	9	2	0	0	0	0
GLADES	0	5	62	41	1	0	0	0	0	0	0	0	0
GULF	0	15	45	51	10	1	5	3	0	0	7	2	0
HAMILTON	0	3	75	112	17	0	7	2	0	0	10	12	1
HARDEE	0	8	84	41	0	1	8	2	0	0	0	0	0
HENDRY	0	0	35	75	10	0	0	0	0	0	0	0	0
HERNANDO	0	7	100	84	9	0	0	0	0	18	66	26	0
HIGHLANDS	0	0	5	11	1	0	10	50	0	10	24	22	0
HILLSBOROUGH	28	118	1114	893	133	58	1141	1000	95	66	159	85	16
HOLMES	0	3	60	124	26	0	0	0	0	3	5	7	2
INDIAN RIVER	0	0	4	9	3	0	0	0	0	0	9	8	4
JACKSON	0	2	34	39	0	0	0	0	0	1	6	1	2
JEFFERSON	0	1	27	26	4	3	23	81	5	0	0	0	0
LAFAYETTE	0	0	0	0	0	0	0	0	0	0	0	0	0
LAKE	0	61	795	645	58	61	795	645	58	0	38	16	3
LEE	1	0	0	0	0	0	0	0	0	17	34	25	6
LEON	25	0	0	0	0	0	0	0	0	8	20	9	4
LEVY	4	0	5	8	0	0	5	3	0	3	29	2	0
LIBERTY	0	0	0	0	0	0	0	0	0	0	0	0	0
MADISON	0	0	7	19	4	20	12	40	10	0	0	0	0
MANATEE	0	25	358	137	9	19	124	31	3	17	166	11	0
MARION	0	0	443	303	46	25	1148	963	36	30	121	45	27
MARTIN	0	0	101	125	6	5	20	18	5	11	12	10	0
MONROE	12	19	227	264	29	19	227	264	30	12	0	1	1
NASSAU	0	0	0	0	0	0	0	0	0	1	11	5	0
OKALOOSA	0	1	686	319	75	5	138	140	58	6	28	14	2
OKEECHOBEE	1	6	57	74	5	0	0	0	0	2	21	1	0
ORANGE	23	123	1390	1680	49	124	770	806	49	98	219	66	8
OSCEOLA	0	0	0	0	0	0	0	0	0	8	8	5	0
PALM BEACH	18	11	107	26	8	0	0	0	0	5	64	25	0
PASCO	5	7	209	120	5	20	123	72	15	20	39	26	4
PINELLAS	25	682	6263	4807	768	682	6263	4807	768	40	170	126	26
POLK	10	45	1772	2043	196	0	5	20	0	6	15	6	0
PUTNAM	12	4	62	119	16	0	24	35	7	4	13	1	0

DISTRICT	EARLY PSYCHOLOGICAL SERV.					SCHOOL SOCIAL WORK				OCCUPATIONAL THERAPY			
	0-2	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21
ST. JOHNS	0	1	45	76	9	0	0	0	0	0	0	0	0
ST. LUCIE	0	0	160	122	0	0	294	81	0	0	49	12	3
SANTA ROSA	0	20	298	281	29	1	109	126	7	2	15	2	0
SARASOTA	1	0	0	0	0	0	0	0	0	0	0	0	0
SEMINOLE	27	57	432	387	36	30	300	208	11	5	26	14	2
SUMTER	0	0	0	2	0	0	0	0	0	0	0	0	0
SUWANNEE	0	0	0	0	0	0	0	0	0	4	9	1	0
TAYLOR	0	0	24	14	3	0	0	0	0	0	0	0	0
UNION	0	0	0	0	0	0	0	0	0	0	0	0	0
VOLUSIA	3	0	397	105	0	33	364	156	2	8	93	29	0
WAKULLA	0	0	59	6	0	0	0	0	0	0	0	0	0
WALTON	0	2	76	51	2	0	0	0	0	0	0	0	0
WASHINGTON	0	4	88	224	67	0	0	0	0	0	0	0	0
STATE TOTAL	303	2046	24305	22261	2605	1520	18205	14795	1665	771	2917	1273	258
FLA SCH D/B	0	17	68	108	16	14	150	332	120	2	39	20	1
DEV SERVICES	709	274	0	0	0	516	0	0	32	339	0	0	11
MENTAL HLTH	440	240	0	0	83	0	53	207	17	0	0	0	17
STATE TOTAL	1149	531	68	108	99	530	203	539	169	341	39	20	29
GRAND TOTAL	1452	2577	24373	22369	2704	2050	18408	15334	1834	1112	2956	1293	287

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EXCEPTIONAL STUDENT EDUCATION

TOTAL REPORT BY AGE BY SERVICE OF CHILDREN AND YOUTH RECEIVING RELATED SERVICES 1985-86

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DISTRICT	SPEECH/LANG. PATHOLOGY				AUDIOLIGICAL SERVICES				RECREATION SERVICES			
	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21
ALACHUA	0	0	0	0	8	16	11	6	0	0	0	0
BAKER	0	15	8	2	0	0	0	0	0	0	0	0
BAY	40	78	53	20	32	45	45	12	0	0	0	0
BRADFORD	0	0	0	0	0	0	0	0	0	0	0	0
BREVARD	76	298	165	0	23	61	21	13	0	6	21	1
BROWARD	396	4227	153	1	113	258	139	10	0	0	0	0
CALHOUN	0	12	4	1	0	0	0	0	0	0	0	0
CHARLOTTE	0	0	0	0	0	0	0	0	0	0	0	0
CITRUS	18	121	87	15	84	392	142	0	4	11	15	5
CLAY	41	494	222	3	0	0	0	0	0	0	0	0
COLLIER	4	188	90	11	0	0	0	0	0	0	0	0
COLUMBIA	0	0	0	0	0	0	0	0	0	0	0	0
DADE	215	3002	434	10	26	139	441	46	0	0	0	0
DESOTO	2	37	29	0	0	0	0	0	0	0	0	0
DIXIE	0	0	0	0	0	0	0	0	0	0	0	0
DUVAL	55	1169	941	101	61	206	84	20	0	0	0	0
ESCAMBIA	10	314	274	8	125	222	174	29	0	0	0	0
FLAGLER	0	0	0	0	0	0	0	0	0	0	0	0
FRANKLIN	0	13	1	0	1	1	3	1	0	0	0	0
GADSDEN	10	103	50	2	0	159	43	0	0	0	0	0
GILCHRIST	0	0	0	0	0	0	0	0	0	0	0	0
GLADES	0	0	0	0	0	0	0	0	0	0	0	0
GULF	0	0	0	0	0	0	0	0	0	0	0	0
HAMILTON	0	25	30	8	0	0	0	0	0	0	0	0
HARDEE	3	27	8	0	0	0	0	0	0	44	50	0
HENDRY	0	23	16	5	0	0	0	0	0	0	0	0
HERNANDO	12	115	57	11	0	0	0	0	0	0	0	0
HIGHLANDS	9	37	24	0	0	0	0	0	0	0	0	0
HILLSBOROUGH	15	1635	465	15	728	902	264	0	0	0	0	0
HOLMES	5	27	21	7	0	0	0	0	0	0	0	0
INDIAN RIVER	60	63	42	7	0	0	0	0	0	0	0	0
JACKSON	0	7	53	38	3	0	0	0	0	0	0	0
JEFFERSON	0	0	0	0	0	0	0	0	0	0	0	0
LAFAYETTE	0	0	0	0	0	0	0	0	0	0	0	0
LAKE	0	0	0	0	0	4	4	0	0	0	0	0
LEE	29	426	222	53	3	25	34	12	45	68	150	70
LEON	5	151	111	10	10	23	18	1	0	0	0	0
LEVY	0	0	0	0	0	0	0	0	0	0	0	0
LIBERTY	0	1	5	0	0	0	0	0	0	0	0	0

DISTRICT	SPEECH/LANG. PATHOLOHY				AUDIOLIGICAL SERVICES				RECREATION SERVICES			
	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21
MADISON	0	8	28	1	0	0	0	0	0	0	0	0
MANATEE	15	349	67	2	8	3	0	0	0	0	0	0
MARION	16	232	74	18	0	0	0	0	0	0	0	0
MARTIN	21	68	37	4	0	3	3	1	0	9	36	15
MONROE	0	0	0	0	0	0	0	0	0	0	0	0
NASSAU	0	0	0	0	0	0	0	0	0	0	0	0
OKALOOSA	37	80	24	0	1	6	4	3	0	53	54	3
OKEECHOBEE	5	42	30	3	0	0	0	0	0	0	0	0
ORANGE	103	994	404	25	49	125	65	3	0	0	0	0
OSCEOLA	13	87	33	2	5	5	2	0	0	0	0	0
PALM BEACH	15	712	309	51	37	397	159	25	0	0	0	0
PASCO	39	270	188	4	5	7	1	0	39	64	68	44
PINELLAS	41	654	736	117	69	273	260	129	682	6263	4807	768
POLK	13	500	20	10	2	32	20	10	0	0	0	0
PUTNAM	5	72	62	9	0	0	0	0	0	0	0	0
ST. JOHNS	2	73	38	6	0	1	4	0	0	0	0	0
ST. LUCIE	1	125	9	0	2	10	0	0	0	0	0	0
SANTA ROSA	4	204	182	18	0	5	2	1	0	0	0	0
SARASOTA	0	0	0	0	0	0	0	0	0	0	0	0
SEMINOLE	13	165	92	19	13	157	120	5	3	238	221	3
SUMTER	0	0	0	0	0	0	0	0	0	0	0	0
SUWANNEE	6	29	6	0	0	0	0	0	0	0	0	0
TAYLOR	0	35	5	0	0	0	0	0	0	0	0	0
UNION	0	12	6	0	0	0	0	0	0	0	0	0
VOLUSIA	35	499	88	0	28	56	19	4	19	225	95	8
WAKULLA	0	0	0	0	0	0	0	0	0	0	0	0
WALTON	0	0	0	0	0	0	0	0	0	0	0	0
WASHINGTON	3	12	1	5	0	0	0	0	0	0	0	0
STATE TOTAL	1399	17876	6049	587	1433	3535	2080	330	792	6981	5517	917
FLA SCH D/B	0	0	0	0	14	150	332	120	14	150	332	120
DEV SERVICES	241	0	0	0	214	0	0	2	121	53	207	46
MENTAL HLTH	20	0	0	3	3	0	0	2	430	203	539	181
STATE TOTAL	261	0	0	3	231	150	332	127	430	203	539	181
GRAND TOTAL	1660	17876	6049	590	1664	3685	2412	457	1222	7184	6056	1098

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EXCEPTIONAL STUDENT EDUCATION
TOTAL REPORT BY AGE BY SERVICE OF CHILDREN AND YOUTH RECEIVING RELATED SERVICES 1985-86

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DISTRICT	DIAGNOSTIC SERVICES				PHYSICAL THERAPY				TRANSPORTATION SERVICES			
	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21
ALACHUA	0	0	0	0	13	33	35	10	4	19	15	6
BAKER	0	0	0	0	0	0	0	0	0	4	32	4
BAY	22	66	70	7	19	25	16	3	66	181	53	24
BRADFORD	0	0	0	0	3	4	0	0	7	6	5	2
BREVARD	422	2648	1739	170	142	208	134	47	146	809	865	81
BROWARD	210	22	13	8	0	174	56	14	72	689	581	138
CALHOUN	0	0	0	0	0	0	0	1	0	0	0	0
CHARLOTTE	0	0	0	0	3	15	2	1	3	6	7	2
CITRUS	10	25	8	0	7	24	7	1	17	16	33	9
CLAY	0	8	5	0	2	43	22	0	43	193	78	4
COLLIER	0	3	3	0	1	20	6	1	6	147	190	21
COLUMBIA	7	3	1	0	10	3	1	0	15	22	27	14
DADE	2	17	363	18	95	233	97	25	399	2187	1082	285
DESOTO	0	0	0	0	0	0	1	0	11	10	11	8
DIXIE	0	0	0	0	0	0	0	0	0	0	0	0
DUVAL	2	11	7	3	30	137	102	12	76	339	233	54
ESCAMBIA	31	134	218	22	13	38	32	3	54	368	376	94
FLAGLER	0	0	0	0	2	1	0	0	1	3	2	0
FRANKLIN	1	4	4	0	0	0	0	0	0	1	0	0
GADSDEN	8	119	23	0	7	10	5	1	33	48	20	3
GILCHRIST	0	9	9	1	0	0	0	0	0	0	0	0
GLADES	0	0	0	0	0	0	0	0	0	0	0	0
GULF	17	133	53	0	0	8	1	0	5	11	6	0
HAMILTON	0	0	0	0	0	12	9	2	3	28	27	12

DISTRICT	DIAGNOSTIC SERVICES				PHYSICAL THERAPY				TRANSPORTATION SERVICES			
	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21
HARDEE	7	69	27	1	0	0	0	0	0	11	10	2
HENDRY	0	3	1	0	0	0	0	0	3	20	14	2
HERNANDO	1	1	2	0	0	0	0	0	19	74	63	18
HIGHLANDS	9	120	95	12	4	1	1	0	1	19	21	1
HILLSBOROUGH	0	0	0	0	71	151	108	14	161	748	846	175
HOLMES	3	60	124	26	1	2	3	1	2	5	11	17
INDIAN RIVER	0	0	0	0	0	7	5	3	2	34	83	18
JACKSON	7	36	39	0	2	6	4	1	2	11	17	20
JEFFERSON	0	0	0	0	0	0	0	0	0	0	0	0
LAFAYETTE	0	0	0	0	0	0	0	0	0	0	0	0
LAKE	61	798	645	58	0	10	19	2	0	26	38	18
LEE	75	29	30	2	16	41	27	15	53	143	261	95
LEON	0	0	0	0	13	25	14	4	9	24	20	22
LEVY	0	3	1	0	0	0	0	0	12	9	14	4
LIBERTY	0	1	0	0	0	0	0	0	0	1	0	0
MADISON	5	0	0	0	0	0	0	0	0	0	0	0
MANATEE	6	2	7	1	6	20	8	0	36	329	95	8
MARION	5	0	0	0	27	106	38	23	8	232	111	53
MARTIN	13	7	14	0	7	6	4	0	21	33	82	4
MONROE	19	227	254	29	12	1	1	0	19	227	264	29
NASSAU	0	0	0	0	2	8	5	0	3	10	9	0
OKALOOSA	0	53	54	3	5	10	3	2	7	126	123	47
OKEECHOBEE	11	0	0	0	1	8	0	0	7	15	9	0
ORANGE	70	122	29	0	80	96	57	1	190	889	625	72
OSCEOLA	0	0	0	0	8	5	5	0	0	0	0	0
PALM BEACH	74	21	13	1	5	53	25	0	102	1906	1204	214
PASCO	0	13	2	0	20	34	21	5	20	322	118	10
PINELLAS	167	1118	1396	328	40	170	126	26	48	178	147	37
POLK	18	114	78	21	6	15	6	0	6	60	52	10
PUTNAM	0	0	0	0	10	15	10	2	5	14	12	1
ST. JOHNS	4	255	393	36	0	0	0	0	6	16	13	17
ST. LUCIE	10	7	0	0	2	17	7	2	2	162	78	0
SANTA ROSA	7	9	1	0	9	10	20	0	21	36	16	0
SARASOTA	15	9	12	5	14	8	5	2	78	251	279	75
SEMINOLE	116	22	97	1	6	24	15	1	73	465	396	89
SUMTER	0	0	0	0	0	0	0	0	5	9	2	0
SUWANNEE	0	0	0	0	0	0	0	0	2	0	0	0
TAYLOR	14	41	16	3	0	3	0	0	0	7	5	4
UNION	0	0	0	0	0	0	0	0	0	0	0	0
VOLUSIA	97	8	0	0	15	98	39	0	51	409	220	56
WAKULLA	0	0	0	0	0	0	0	0	0	18	0	0
WALTON	0	7	0	0	0	0	0	0	0	0	0	0
WASHINGTON	7	0	0	0	0	5	18	57	0	1	1	0
STATE TOTAL	1553	6354	5836	756	747	2009	1127	282	1935	11927	8904	1879
FLA SCH D/B	14	150	332	120	2	23	33	1	14	150	332	120
DEV SERVICES	554	0	0	40	137	0	0	11	266	0	0	25
MENTAL HLTH	149	0	0	79	0	0	0	0	48	0	0	18
STATE TOTAL	717	150	332	239	139	23	33	12	328	150	332	163
GRAND TOTAL	2270	6504	6168	995	886	2032	1160	294	2263	12077	9236	2042

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TOTALS REPORT BY AGE BY SERVICE OF CHILDREN AND YOUTH RECEIVING RELATED SERVICES 1985-86

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DISTRICT	SCHOOL HEALTH SERVICES				COUNSELING SERVICES				OTHER RELATED SERVICES				PRIV.
	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	SCHL.
ALACHUA	0	0	0	0	0	1	8	3	0	0	0	0	2
BAKER	3	94	98	0	0	39	71	16	0	0	0	0	0
BAY	230	1047	647	44	230	1047	647	44	0	0	0	0	0
BRADFORD	0	0	0	0	2	39	29	2	2	0	0	0	0
BREVARD	407	1342	349	36	178	622	849	132	0	0	0	0	30
BROWARD	52	3372	4414	537	52	3372	4414	517	0	0	00	0	
CALHOUN	0	0	0	0	0	31	65	12	0	0	0	0	0
CHARLOTTE	0	0	0	0	0	51	56	17	0	0	0	0	5
CITRUS	0	0	0	0	2	32	38	0	0	0	0	0	0
CLAY	2	9	1	0	0	137	158	1	0	0	0	0	2

DISTRICT	SCHOOL HEALTH SERVICES				COUNSELING SERVICES				OTHER RELATED SERVICES				PRIV.
	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	3-5	6-11	12-17	18-21	SCHL.
COLLIER	17	280	85	15	3	611	622	23	0	0	0	0	3
COLUMBIA	15	96	45	2	13	121	77	3	0	0	0	0	0
DADE	0	2836	8540	0	541	8720	8822	791	0	5	0	0	178
DESOTO	0	0	0	0	0	0	0	0	0	0	0	0	1
DIXIE	0	0	0	0	0	5	0	0	0	0	0	0	0
DUVAL	12	31	41	0	0	0	0	0	0	9	52	4	0
ESCAMBIA	31	133	225	17	27	63	83	14	10	16	21	3	17
FLAGLER	0	0	0	0	0	2	0	0	0	0	0	0	0
FRANKLIN	9	92	92	4	0	2	5	0	0	0	0	0	0
GADSDEN	0	0	0	0	4	11	0	0	0	0	0	0	3
GILCHRIST	0	0	0	0	0	1	5	1	0	0	0	0	0
GLADES	5	62	41	1	5	62	33	0	0	0	0	0	0
GULF	0	107	86	5	5	22	29	3	0	0	0	0	0
HAMILTON	12	133	106	18	0	3	3	0	0	0	0	0	0
HARDEE	5	234	161	7	7	28	23	0	0	0	0	0	0
HENDRY	1	137	24	1	0	20	42	0	0	0	0	0	0
HERNANDO	200	582	161	6	0	71	251	46	0	0	0	0	0
HIGHLANDS	6	60	48	30	1	15	25	1	0	0	0	0	3
HILLSBOROUGH	234	937	920	286	164	5987	4679	417	0	0	0	0	5
HOLMES	28	152	128	28	1	0	0	0	0	0	0	0	0
INDIAN RIVER	0	0	0	0	0	4	9	3	0	0	0	0	0
JACKSON	0	0	0	0	0	0	0	0	0	0	0	0	0
JEFFERSON	0	0	0	0	0	110	117	10	0	0	0	0	0
LAFAYETTE	0	0	0	0	0	0	0	0	0	0	0	0	0
LAKE	61	795	645	58	61	795	645	58	0	0	0	0	4
LEE	45	68	150	70	0	0	0	0	0	7	8	5	0
LEON	0	0	0	0	0	51	54	3	0	0	0	0	3
LEVY	0	0	0	0	0	10	15	0	0	0	0	0	0
LIBERTY	0	0	0	0	0	0	0	0	0	0	0	0	0
MADISON	0	0	0	0	0	0	0	0	0	0	0	0	0
MANATEE	20	56	28	10	1	771	578	0	0	0	0	0	35
MARION	117	1790	957	157	117	1790	957	157	0	0	0	0	0
MARTIN	1	3	2	0	0	4	21	0	0	0	0	0	12
MONROE	49	103	47	0	3	42	50	13	0	0	0	0	5
NASSAU	0	0	0	0	0	20	18	0	0	0	00	0	
OKALOOSA	0	56	56	4	0	16060	39	0	0	0	0	0	
OKEECHOBEE	0	0	0	0	0	3	0	0	0	0	0	0	0
ORANGE	130	378	342	55	11	96	42	5	0	0	0	0	0
OSCEOLA	0	0	0	0	0	4	0	0	0	0	0	0	3
PALM BEACH	5	9	6	0	0	27	50	0	5	101	55	1	22
PASCO	84	243	182	39	42	547	906	20	0	0	0	0	3
PINELLAS	39	140	115	30	682	6263	4807	768	0	0	0	0	0
POLK	188	3247	2180	154	19	263	277	64	0	0	0	0	0
PUTNAM	14	41	36	15	11	69	106	21	0	0	0	0	5
ST. JOHNS	7	241	384	45	0	33	21	7	0	0	0	0	10
ST. LUCIE	42	281	195	6	0	268	65	0	0	29	37	0	8
SANTA ROSA	0	0	0	0	4	280	277	30	0	0	0	0	0
SARASOTA	0	0	0	0	0	0	0	0	0	0	0	0	0
SEMINOLE	1	127	129	4	0	76	194	3	0	0	0	0	4
SUMTER	0	0	0	0	0	0	2	0	0	0	0	0	2
SUWANNEE	8	4	0	0	0	0	16	0	0	0	0	0	0
TAYLOR	0	0	0	0	0	0	0	0	0	0	0	0	0
UNION	0	0	0	0	0	0	0	0	0	0	0	0	0
VOLUSIA	20	78	68	23	0	1536	1101	0	0	1220	0	0	0
WAKULLA	0	6	0	0	0	0	0	0	0	0	0	0	0
WALTON	0	0	0	0	0	0	0	0	0	0	0	0	0
WASHINGTON	17	153	225	67	17	153	225	67	0	0	0	0	0
STATE TOTAL	2117	19555	21958	1774	2203	34390	31646	3311	15	1387	1733	13	472
FLA SCH D/B	14	150	332	120	14	150	253	64	0	0	0	0	0
DEV SERVICES	6	0	0	17	154	0	0	6	73	0	0	0	0
MENTAL HLTH	0	0	0	0	430	53	207	203	0	0	0	26	0
STATE TOTAL	20	150	332	137	598	203	460	273	73	0	0	26	0
GRAND TOTAL	2173	19705	22290	1911	2801	34593	32106	3584	88	1387	173	39	472

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